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Coastal Zone Conversion Permit Act Process Recommendations Report

Prepared for the
Delaware Department of Natural Resources and Environmental Control

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Executive Summary

Background

Delaware House Bill 190, the Coastal Zone Conversion Permit Act (CZCPA), amended the state's Coastal Zone Act (CZA) to allow heavy industrial redevelopment and limited bulk product transfer at 14 heavy industry sites in the Coastal Zone. CZCPA requires that the Delaware Department of Natural Resources and Environmental Control (DNREC) develop regulations for Conversion Permits by October 1, 2019. Consistent with this requirement, DNREC will set up and serve as the lead agency for a Regulatory Advisory Committee (RAC) that will support its development of new regulations.

Process

DNREC took the first steps in this process by seeking public input about the RAC prior to identifying committee members. In October 2017, DNREC retained the Consensus Building Institute (CBI) to assist the agency with assessing stakeholder concerns and opinions about establishing the RAC and drafting regulations. CBI conducted stakeholder interviews in-person and by phone in October and November 2017 to gather some initial thoughts on how DNREC could establish a collaborative and effective process. Two subsequent public workshops were held to provide opportunities for more stakeholders to participate in this initial phase of the process, help ensure greater inclusion and transparency, and obtain further input on establishing the process for collaboratively developing regulations. CBI reviewed/consulted all comments heard during the initial assessment interviews, the two public workshops, and any written public comments in the drafting of this process recommendations report for DNREC. DNREC will take all that they have heard and the final Coastal Zone Conversion Permit Act Process Recommendations Report (Report) into account as they identify the path forward. DNREC has laid out the following timeline for this process:

- **December 22, 2017:** CBI releases its draft Report.
- **January 19, 2018:** Deadline for DNREC and public comment on the draft Report. (This was revised from January 8, 2017 after DNREC heard feedback at the first public workshop on the need for a longer comment period.)
- **January 31, 2018:** CBI releases its final Report to DNREC and the public.
- **February 2018:** DNREC reviews the final Report and begins to establish the RAC.

General findings

In its assessment, CBI heard a wide range of opinions and concerns about the following topics:

1. The CZCPA legislative process
2. The main provisions of the CZCPA legislation
3. The DNREC process for establishing regulations to implement the CZCPA (including the CBI initial assessment interviews to generate input on the development of the RAC)
4. Main factors for DNREC and others to consider in developing the CZCPA regulations
5. Other issues and comments

Recommendations

CBI developed 13 draft recommendations for DNREC as it convenes a RAC to help the agency develop regulations to implement the CZCPA. They are:

Scope

Recommendation #1: The RAC should focus solely on changes to existing regulations or the creation of additional regulations necessary to implement the CZCPA. The RAC would not be charged with amending or revising the regulations already in place for existing permits.

Stakeholder Groups

Recommendation #2: The DNREC Secretary should provide for representation by three broad stakeholder categories and one “other” category for those who may not fit clearly in one of those three categories: 1) environment, environmental justice, and public health; 2) community including fenceline communities; 3) business and labor; and 4) other.

Committee Size and Balance

Recommendation #3: The Secretary should target a RAC of 15-20 members and allow for the following: 1) five to six members (5 to 6) from each of the three categories noted above, in equal balance of numbers for each of the three main stakeholder categories; 2) one to three (1 to 3) additional seats for those who do not fit within those three categories, if needed; 3) one (1) full member seat for DNREC; and 4) alternates should be allowed.

Criteria for Membership

Recommendation #4: The Secretary should establish clear criteria for membership and require that nominees to the RAC complete a nomination and conflict of interest disclosure form that is made publicly available.

Membership Selection

Recommendation #5: The Secretary should establish a transparent nomination process for each stakeholder category. Interested parties would nominate potential representatives (self-nominations would be accepted as well) to the RAC during a period of time in early 2018. The Secretary would review the nominations and select members and alternates from the pool of nominees within a committee structure decided by the Secretary as informed by the Report.

Workgroups and Technical Expertise

Recommendation #6: The Secretary should allow for the formation of RAC subcommittees or technical workgroups that can undertake detailed analysis and discussion of specific topics. These may include non-member technical experts. Workgroups would be for deliberation, exploration, and option generation, but any and all committee decisions should rest solely with the full RAC.

Community Outreach

Recommendation #7: The Secretary and the RAC should make a concerted effort to reach out to, communicate with, and build working relationships with marginalized and potentially affected communities, neighborhoods, and groups. The RAC should consider forming a workgroup to address the needs of marginalized, environmental justice, and fenceline communities and groups in the development of regulations.

Committee Transparency

Recommendation #8: The Secretary should ensure RAC transparency by considering the time, place, and form of its meetings and any associated public outreach and engagement to provide for public access and participation.

Committee Product

Recommendation #9: The Secretary should instruct the RAC to write prescriptive guidance and review regulatory language drafted by DNREC (when possible). This would allow for the RAC to draft detailed, prescriptive guidance to provide DNREC with the conceptual approach and many details for drafting actual regulations. Wherever possible, the RAC should have the opportunity to review and comment on specific draft regulatory language as it is developed by DNREC during the process.

Membership Expectations

Recommendation #10: The Secretary should establish expectations for participation. RAC members should review, revise as needed, and adopt such expectations as formal groundrules for participation.

Committee Decision Rule

Recommendation #11: The Secretary should allow the RAC to utilize a “consensus” approach, which seeks to identify a final package of recommendations that all or almost all RAC members can “live with.” The RAC would issue a final report with consensus as defined generally above to the greatest extent possible within the time and resources allocated to the RAC.

Role of DNREC on the RAC

Recommendation #12: DNREC should actively support and participate in the RAC deliberations, and the DNREC counsel from the DOJ should provide legal assistance, including drafting, and advice to the RAC. If resources allow, a non-partisan facilitator would facilitate meetings and support the RAC and the chair throughout the process.

Issues to Cover in the Deliberations

Recommendation #13: DNREC should develop a draft work plan and timeline for the RAC’s work and the RAC should review, revise as needed, and adopt the work plan and timeline at one of its first meetings.

Appendices

Appendix A lists the individuals CBI interviewed during the first phase of its assessment. Appendices B and C are a summary of the two public workshops and the list of workshop participants, respectively. Appendix D is a compilation of all written comments that were submitted to DNREC by December 7, 2017 in response to the workshops. Appendix E is a draft nomination form. Appendix F is a draft disclosure form. Appendix G is a list of possible resources for the RAC. Appendix H is a form that the public may use, if desired, to submit written public comments on this draft Report.

Further information and public comment

Further information and all materials from the public workshops are available at de.gov/conversionpermits.

The public is welcome and encouraged to comment on the draft recommendations and appendices in this draft Report. Comments received by January 19, 2018 will be taken into consideration as CBI finalizes this document. Comments may be:

Emailed to:

CZA_Conversion_Permits@state.de.us

Mailed to:

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Division of Energy and Climate

100 West Water Street, Suite 5A

Dover, DE 19904

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Background

Delaware House Bill 190, the Coastal Zone Conversion Permit Act (CZCPA), amended the state's Coastal Zone Act (CZA) to allow heavy industrial redevelopment and limited bulk product transfer at 14 heavy industry sites in the Coastal Zone. CZCPA requires that the Delaware Department of Natural Resources and Environmental Control (DNREC) develop regulations for Conversion Permits by October 1, 2019. The Coastal Zone Act was a landmark piece of legislation when it was passed in 1971 and it has profoundly shaped Delaware's culture, communities, economy and environment. DNREC recognizes that there are many conflicting points of view about industrial development in the Coastal Zone and that effective regulations can be written only by using the opinions and expertise of a wide-range of stakeholders.

To be responsive to the revised statute and the diversity of interests in the Coastal Zone, DNREC will convene a Regulatory Advisory Committee (RAC) to advise the agency in developing revised regulations. RACs are commonly utilized by state and federal agencies to gather input during the development of regulations. There is, however, no singular standard for who can serve on a RAC, how members are selected, or what role the RAC plays in the development of regulations.

DNREC has taken the first steps in this process by seeking public input about the RAC prior to identifying committee members and the scope of its work. To obtain this feedback:

1. DNREC retained the Consensus Building Institute (CBI), a nonprofit and non-partisan organization that provides mediation and facilitation services, to conduct a series of initial assessment interviews, facilitate two public workshops, and develop process recommendations.
2. CBI conducted 31 assessment interviews with individuals and groups who have a stake in the Coastal Zone or could be impacted by the new regulations (see Appendix A for a list of interviewees).
3. DNREC held two public workshops to hear further public comment and receive input on the RAC process on November 29 and 30 (see Appendix B for a summary of the workshops and Appendix C for the list of participants).
4. CBI produced this draft Coastal Zone Conversion Permit Act Process Recommendations Report (Report) for DNREC to consider as it convenes the RAC.

The public is welcome and encouraged to comment on the recommendations and appendices in this draft Report. Comments received by January 19, 2018 will be taken into consideration as CBI finalizes this document. Comments may be:

Emailed to:

CZA_Conversion_Permits@state.de.us

Mailed to:

Kevin Coyle
Division of Energy and Climate
100 West Water Street, Suite 5A
Dover, DE 19904.

General Findings

During the assessment process, CBI conducted 31 initial assessment interviews, facilitated two public workshops, and reviewed 13 written public comments received at or after the public workshops. The final list of process participants included representatives and members of environmental organizations, communities, elected bodies, municipalities, businesses, consulting firms, trade associations, civic associations, as well as private citizens. Input heard during this process covered individual and organizations' views on the changes to the Coastal Zone Act, suggestions for convening the RAC, and thoughts on the contents of the forthcoming regulations. The following table summarizes common themes and specific concerns expressed by participants:

Theme	Specific concerns
The CZCPA legislative process	<ul style="list-style-type: none"> • Anger over the lack of public participation and transparency during the development and passage of H.B. 190.
The main provisions of the CZCPA legislation	<ul style="list-style-type: none"> • Concerns about increased risk of oil and chemical spills due to the bulk product transfer (BPT) provision. • Support for the legislative intent to bring good jobs to Delaware. • Support for a law that modernizes the state's current approach while balancing economics with the environment. • Concern about the best way to balance economic development while maintaining appropriate environmental safeguards and remediating polluted sites. • The law is too vague.
DNREC's process for establishing regulations to implement the CZCPA (including the CBI initial assessment interviews to generate input on the development of the RAC)	<ul style="list-style-type: none"> • Concerns about DNREC's engagement with affected communities to-date and the agency's past responses to community concerns. • The need for sufficient technical resources to support community representatives on the RAC. • The need for community representation on the RAC. • Ensuring the RAC can work efficiently to meet the CZCPA's October 1, 2019 deadline. • Process transparency and sufficient

	<p>notification.</p> <ul style="list-style-type: none"> • Ensuring RAC members are credible. • Concerns about the power and education differential between stakeholder groups. • Developing criteria for RAC membership (e.g. strong public health and scientific backgrounds). • Addressing conflicts of interest on the RAC. • The need to follow public meeting best practices by holding meetings at convenient times in convenient places.
Main factors for DNREC and others to consider in developing the CZCPA regulations	<ul style="list-style-type: none"> • Cumulative health impacts and disparities in communities near the 14 sites. • Safety and noise along major transportation corridors (e.g. train traffic in Newark). • The need for comprehensive baseline data. • Options for clarifying and/or streamlining the sequence of permits required. • Conversion Permit application requirements. • Clarity for prospective new investors and companies on the permitting timeline. • Belief that the legislation is prescriptive and descriptive of what the regulations should contain. • Language for offsets needs to be clarified. • Companies interested in coming to Delaware need a clear picture of the permitting timeline and requirements to pursue a deal. • Many terms require clear definitions. • The need to consider all aspects of potentially-impacted communities, including employment and health.
Other issues and comments	<ul style="list-style-type: none"> • Concerns about DNREC's capacity to monitor and enforce new and existing activities on the 14 sites.

	<ul style="list-style-type: none"> • Prioritizing cleanup in legacy communities and sites before redeveloping the 14 sites. • Concerns about but also support for DNREC approving a before the new regulations are finalized. • Support for a long-term, independent body composed of stakeholders that DNREC may consult with regarding implementation, permits, enforcement, public concerns, etc.
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Recommendations

CBI developed 13 draft recommendations for DNREC as it convenes a RAC to help the agency develop regulations to implement the CZCPA. The following recommendations synthesize input heard during the initial assessment interviews, the two public workshops, and written public comments. CBI welcomes public comment on all of its rationales and recommendations. CBI did its best to reflect what its staff heard during these discussions; any errors or omissions are the sole responsibility of CBI.

Scope

The Secretary should develop a charter and scope for the RAC.

Most commenters expressed a strong preference for the RAC's deliberations to focus solely on developing regulations pertinent to the changes in the Coastal Zone Act made by the legislature in 2017 and not to reopen or revisit other sections of the regulations. A few commenters suggested addressing a limited number of additional issues like *de minimis* permits for small businesses and reconsidering the overall approach to offsets for all permits. Many commenters also emphasized that the RAC should focus on the regulatory changes needed and avoid re-litigating the decisions reached by the General Assembly.

Given these comments, we recommend the general scope of the RAC be deliberating upon and advising the Secretary of DNREC on the development of new regulations pertinent to the CZCPA. The RAC would focus solely on changes to existing regulations or the creation of additional regulations necessary to implement the 2017 changes. The RAC would not be charged with addressing the regulations already in place for Coastal Zone Act permits for manufacturing uses or expansion of existing heavy industry sites.

Recommendation #1: The RAC should focus solely on changes to existing regulations or the creation of additional regulations necessary to implement the CZCPA. The RAC would not be charged with amending or revising the regulations already in place for existing permits.

Stakeholder Groups

From the initial interviews, we identified up to four broad categories of stakeholder groups on this issue. These four possible groups are:

- Environment, Environmental Justice, and Public Health: This could include environmental, environmental justice, and public health groups and coalitions, as well as public health agencies and environmental science and law experts. This could include both long-established environmental groups in Delaware and newer organizations who may represent different or emerging views.
- Community. This could include fenceline neighborhoods, municipalities, counties, county planning organizations, local elected officials and others who represent communities with a stake in the Coastal Zone or communities that could be affected by the redevelopment of the 14 sites. This could include communities concerned about

impacts directly related to but outside of the Coastal Zone, such as transportation of hazardous materials to or from the Coastal Zone. This category could also include stakeholders from the emergency management and land use planning sectors.

- Business and Labor. This could include statewide business groups or trade associations, individual companies with a stake in one of the 14 sites, individual companies or industry representatives of new industries interested in siting in the Coastal Zone (e.g. “green” industries), consultants such as lawyers, engineers, or others who do business with one or more of the 14 sites (see “Criteria for Membership” for further commentary on this topic), companies who do business in or near the Coastal Zone more generally, and economic development agencies.
- Other. This could include those interests not clearly represented in the categories above such as the fishing industry, tourism industry, recreational users, and churches or religious groups who represent a community.

Most commenters emphasized that the RAC should not include General Assembly members or state-level elected officials.

Recommendation #2: The Secretary should provide for representation by three broad stakeholder categories and one “other” category for those who may not fit clearly in one of those three categories: 1) environment, environmental justice, and public health; 2) community including fenceline communities; 3) business and labor; and 4) other.

Committee Size and Balance

Any committee or group must balance inclusion and efficiency in its size. Smaller groups are typically more efficient and reaching agreement can be easier because there are fewer participants. Larger groups are typically more inclusive and allow for a broader range of interests and subsets of interests. Small groups, however, can lack inclusivity while large groups can lack efficiency. Commenters generally suggested that a group size of 15 to no more than 20 would probably best balance inclusion and efficiency. While there is no “right” answer to the size of a committee, given CBI’s past experience and the range of interests in this issue, we recommend a 15-20 member RAC with five to six (5 to 6) members from each of the three categories noted above, in equal balance of numbers for each of the three main stakeholder categories. DNREC should reserve one to three (1 to 3) additional seats should individuals or organizations outside the three main stakeholder groups make a compelling case for membership. One (1) seat should be reserved for a representative of DNREC who will also serve as the RAC Chair (see “Role of DNREC on the RAC” for further commentary on this topic). Alternates should be allowed for each member to increase participation, provide for absences, and allow for redundancy given potential changes in jobs, positions and life circumstances over time.

Whatever the exact size of the group, DNREC should balance the RAC carefully across interests and stakeholders. For instance, if DNREC decides to add an additional seat in one category, it should strive to do so to the greatest extent possible in the other categories. Depending on the committee decision rule (see “Committee Decision Rule”), an exact numeric balance may not be

necessary, but commenters noted that actual and perceived balance for membership is very important.

DNREC should also consider RAC membership balance for gender, race, ethnicity, and geography. Some commenters also noted that potential members coming from under-resourced communities and organizations may need some form of support to participate fully.

Recommendation #3: The Secretary should target a RAC of 15-20 members and allow for the following: 1) five to six members (5 to 6) from each of the three categories noted above, in equal balance of numbers for each of the three main stakeholder categories; 2) one to three (1 to 3) additional seats for those who do not fit within those three categories, if needed; 3) one (1) full member seat for DNREC; and 4) alternates should be allowed.

Criteria for Membership

From the comments received, we have identified at least the following suggested criteria for membership. Members and alternates should:

- have a stake in the Coastal Zone, potential redevelopment of the 14 sites, and potential impacts of that development, or bring a particular expertise needed (or both)
- complete a disclosure form disclosing financial interests and affiliations related to the issues
- credibly represent an entity with a constituency (e.g. neighborhood, civic association);
- have a particular expertise (e.g. legal, community, technical)
- be willing and able to participate actively in an intensive process with substantial time commitments that may require evening or weekend work
- be willing and able to work constructively with others with whom they may disagree
- be willing and able to work within the scope of the effort – developing regulations to implement the amendments to the CZA

Many commenters raised concerns about potential conflicts of interest among RAC members. Our understanding is that committees such as this one are intended to directly involve members with a direct or indirect interest in the issues because they can best articulate their interests and concerns, raise issues of implementation and regulatory design, and hold extensive technical, local, or other knowledge. Thus, by design, these committees include members who have clear, direct stakes. However, it is important that such interests be fully and publicly disclosed. It is also important that committees be balanced by others who do not have conflicts of interest.

To address concerns about qualifications and conflicts of interest, CBI has developed a draft “nomination form” and a draft “disclosure form” for nominees to complete (see Appendices E and F), based on nomination and disclosure forms from similar committees in Delaware and elsewhere.

Recommendation #4: The Secretary should establish clear criteria for membership and require that nominees to the RAC complete a nomination and disclosure form that is made publicly available.

Membership Selection

Membership selection should include a transparent, clear, and structured process that allows any and all interested parties to be considered for participation. From our commenters, we identified at least three primary approaches to selecting RAC members:

- *Option 1: DNREC Selects Members* – Under each stakeholder category, the Secretary identifies and appoints members and alternates to the RAC.
- *Option 2: Nomination process and DNREC selection* – The Secretary establishes a nomination process for each stakeholder category. Interested parties would nominate potential representatives (self-nominations would be accepted as well) to the RAC. The Secretary would review the nominations and select members and alternates from the pool of nominees within a committee structure decided by the Secretary as informed by the final Report.
- *Option 3: Stakeholder group self-selection* – The Secretary would decide upon an overall structure including the categories of stakeholder group, numbers of members, and criteria for membership based on the final Report. Then each stakeholder group (environmental/environmental justice/public health, community, business/labor) would organize among themselves to select their members and alternates and put forward their “slate” within a set time frame. DNREC would appoint these nominees to the RAC.

Additional approaches suggested by commenters included:

- A. Each legislator from the Coastal Zone and the City of Newark could nominate RAC members.
- B. Ask the General Assembly to pass a new law outlining how RAC members should be appointed (e.g. by the Governor, county leaders or mayors)
- C. The public could consider a broad field of candidates and select members by voting online or endorsements.
- D. Use an approach modeled after the Underground Storage Tank regulatory process: a large formal group (around 50 people) is convened and the public is allowed to comment and participate to the extent of their interest.
- E. Interested parties are nominated within stakeholder groups and a lottery determines the final candidate.
- F. Each stakeholder category offers a set number of nominees to DNREC and the Secretary chooses a certain percentage of them to appoint to the RAC.

Option #1 does not provide a chance for any interested group to note their candidacy. This option would likely lead to a group that is not as inclusive nor diverse as would be possible under recommended Option #2. Option #3, while giving substantial autonomy and decision-making to stakeholder groups, would pose problems for at least some stakeholder groups since they are

diverse and diffuse categories, would likely take substantial time and resources to implement, and might create unnecessary conflict and divisiveness within stakeholder groups. Additional Approach B is probably not feasible; the General Assembly chose not to express its preference for membership selection in the CZCPA. Additional Approach D could produce a RAC with uneven stakeholder interests and one that is too large to make progress on building agreement.

Given comments received on these options and other approaches, we recommend Option #2. DNREC should provide a general framework for the committee structure, define stakeholder groups, identify key criteria for membership selection, and establish a nomination process. Since the development of regulations is DNREC's obligation and responsibility, and as DNREC is the implementer of the CZA regulations, the Secretary would have the responsibility for selecting final membership. At the same time, any and all interested parties ought to have an opportunity to nominate themselves or others so that the Secretary has a full sense of who is interested in participating and providing a process for new, emerging, or different interests to potentially participate in addition to those with express, long-standing interest in the issues. The nomination process should be transparent: the process should be clearly explained, criteria put forth, nominees posted on the DNREC website, and the final RAC members and alternates names and affiliations publicly available. Some public members also commented that the proposed list of members and alternates be available for public comment before being finalized.

Recommendation #5: The Secretary should establish a transparent nomination process for each stakeholder category. Interested parties would nominate potential representatives (self-nominations would be accepted as well) to the RAC during a period of time in early 2018. The DNREC Secretary would review the nominations and select members and alternates from the pool of nominees within a committee structure decided by the Secretary as informed by the Report.

Workgroups and Technical Expertise

The RAC will likely need to establish some workgroups and avail itself of technical expertise from members and outside resources. Typically, workgroups can be established to support the work of the full committee under the following rules:

- Workgroups are for deliberation, exploration, and option generation but they are not and should not be decision-making bodies – decisions should rest solely with the full committee deliberating in public
- Workgroups can include participants outside of committee membership
- The scope and charge of the workgroup should be set by the full committee
- Workgroups should keep some form of meeting summaries or key points discussed and have those posted on the project website.

Any number of topics could require or benefit from a workgroup, but given the changes to the statutes, likely areas for this include the following as identified by the workshops and interviews:

- *Economic impact analysis*, particularly since that is not an expertise of DNREC, potentially with expertise in sustainable development, “triple bottom line” analysis;
- *Financial assurances*, given the complexity of that issue and importance in both the statute and to stakeholders;
- *Offset programs*, since the scale of potential redevelopment and the associated increased complexity of offsets and preferred focus on benefits to the Coastal Zone will need particular exploration;
- *Environmental risk analysis*, especially regarding coastal zones and heavy industry.

Commenters mentioned that the following areas of expertise may be needed to complete the RAC’s work. This expertise might be found in universities, research institutions, agencies, community groups, consulting firms, businesses, or non-governmental organizations. RAC members or alternates themselves may provide some, but likely not all, of this kind of expertise.

- Remediation and brownfields
- Environmental impact assessment
- Economic impact assessment
- Financial assurances
- Permitting processes and policy
- Community engagement
- Environmental law
- Environmental justice
- Climate adaptation and sea level rise
- Coastal wetlands and wildlife
- Emergency response
- Air quality
- Water quality
- Public health
- Economic development and industrial development

Recommendation #6: The Secretary should allow for the formation of RAC subcommittees or technical workgroups that can undertake detailed analysis and discussion of specific topics. These may include non-member technical experts. Workgroups would be for deliberation, exploration, and option generation but any and all committee decisions should rest solely with the full RAC.

Inclusion and Community Outreach

Many commenters expressed deep concern that in its process to-date DNREC has not adequately consulted potentially-impacted communities. Some commenters cited the locations and short notice for the two public workshops as examples of areas where DNREC needs to strengthen its public outreach. Fenceline communities as well as communities along major transportation routes may be directly impacted by any redevelopment and operation of the 14 sites. Many of

these communities have legacy pollution, cumulative health impacts, and other disparities. Commenters stated that DNREC should prioritize cleanup activities on the 14 sites and in legacy communities. Commenters want to see a transparent and inclusive process going forward but are concerned that DNREC will not run such a process based on past experiences with the agency.

Commenters also voiced frustration with a lack of public consultation and outreach during the legislative process for HB 190. Commenters felt that the general public was given little opportunity to comment on the bill before it passed and their comments were made in vain because the decision to revise the CZA had already been made.

Recommendation #7: The Secretary and the RAC should make a concerted effort to reach out to, communicate with, and build working relationships with marginalized and potentially affected communities, neighborhoods, and groups. The RAC should consider forming a workgroup to address the needs of these communities and groups in the development of regulations.

Committee Transparency

Given the interest in the coastal zone, the iconic nature of this statute in Delaware, and the potential range of economic and environmental impacts that might occur, commenters felt strongly that the regulation drafting process must be inclusive and transparent. The following recommended actions are to be considered in total, not as a menu, and other actions may also be necessary and desirable:

- All meetings of the full RAC should be regularly scheduled and publicly posted with sufficient or more than sufficient notice.
- Meeting should be open to the public and provide at least one public comment period during its meetings.
- The process should have a dedicated website to post agendas, meeting summaries, and meeting materials.
- The public should be able to provide written comments during the process that in turn should be distributed to RAC members for consideration.
- The RAC should consider holding their meetings at different locations and times around or near the Coastal Zone (partially restrained by venue options) in order to allow members and the public with different work schedules and other responsibilities to participate. At least some meetings should be held near or in fenceline communities. Some commenters strongly encouraged meetings to be only in and near the Coastal Zone. Some stressed the importance of public transportation access.
- The RAC should host public meetings or workshops at appropriate times during the deliberations. This might include early “listening sessions” for the RAC to hear any issues, concerns, and ideas from the public. This might also include public meetings or workshops once options and specific ideas for regulations have been developed to allow the public to weigh in and comment before the RAC completes its deliberations.

Recommendation #8: The Secretary should ensure RAC transparency by considering the time, place, and form of its meetings and any associated public outreach and engagement to provide for public access and participation.

Committee Product

Given the general charge to the RAC, the group could produce at least one of three kinds of product or outcome for DNREC to discharge its regulatory responsibilities. These three options for a final product are:

- *Option #1: Regulations* – The RAC could seek to draft the regulations themselves. This would require deliberating on and arriving at agreement on the general concepts and details of what a regulation should include, as well as drafting the regulations. The advantage to this approach is that the group maintains full influence over the actual wording and details of regulation. The disadvantages include that drafting precise regulatory language by a large group is time consuming and often exhausting. It could be difficult to meet the regulator deadlines in the Act under this approach.
- *Option #2: Prescriptive Guidance* – The RAC could seek to draft detailed, prescriptive guidance to provide DNREC with the conceptual approach and many details to drafting the actual regulations. The advantages to this approach is that the RAC would focus on the regulatory approach and intent, leaving detailed drafting to DNREC and the Attorney General (AG); that reaching agreement on concepts and direction is likely easier than reaching agreement on exact regulatory language; and that prescriptive guidance, if agreed to by the RAC, provides DNREC clear and specific direction. The disadvantages include that this kind of deliberation will also take extensive time and that there is always the possibility that the RAC will not be satisfied that the later written regulations fully meet the intent and purpose of the RAC's guidance.
- *Option #3: Broad Principles and Options* – The RAC could seek to draft broad principles to guide DNREC in its regulatory development, as well as explore a range of options for addressing particular issues in future regulations (say, financial assurances, offsets, definitions, and other topics). The advantage of this approach is that the RAC could complete these tasks more easily, with less negotiation, and likely less time. The disadvantages include that it does not provide more specific guidance to DNREC, allows DNREC to pick and choose among the options, and may not result in regulations that are broadly supported by, or at least accepted by, many or most.
- *Option #4: Review of Regulatory Language drafted by DNREC* – Any of the above options might also include an opportunity for the RAC to review specific draft regulatory language as it is developed by DNREC after being informed by committee deliberations and advice.

Commenter input on this issue was highly varied with no clear preference on the best approach. Many commenters suggested a phased or blended approach of these options. Most commenters suggested that while Option #1 might be ideal in that all parties will have a say in and be able to see the exact and full regulatory language to be formally reviewed and promulgated, the time,

labor, and “pain” to develop actual regulations by committee seemed daunting. Most commenters felt that Option #3 would not provide enough detailed guidance, would not encourage the in-depth analysis, robust deliberations, and serious negotiations needed among stakeholders, and would provide DNREC too much “leeway” to pick and choose advice. Almost all commenters thought that some form of Option #4 should be folded into the process. Lastly, some commenters expressed concern that implementation of any agreement could be problematic based on the fact that some parts of the late 1990’s CZA regulatory negotiated agreement were not fully implemented (for instance, the environmental indicators program). Another suggestion made was that the RAC should consider if public comments are appropriate on certain drafts of the regulations.

Recommendation #9: The Secretary should instruct the RAC to write prescriptive guidance and review regulatory language drafted by DNREC. This would allow for the RAC to draft detailed, prescriptive guidance to provide DNREC with the conceptual approach and many details for drafting actual regulations. Wherever possible, the RAC should have the opportunity to review and comment on specific draft regulatory language as it is developed by DNREC during the process.

Membership Expectations

Effective committees have a clear scope, charge, and set expectations for members and the public. A number of the above topics, as decided upon, would be described in the RAC charter or scope. In addition, DNREC would need to establish expectations for participation. The following are possible such expectations, norms, or groundrules, drawn from other committee efforts as well as the particulars of this subject matter at hand. For example, participants might be expected to:

- Attend all meetings or have their alternate be present.
- Prepare for meetings ahead of time by reviewing materials, issues, and items to be discussed.
- Participate in associated public meetings and outreach.
- Work in a constructive manner.
- Be respectful of other participants, even those with whom they disagree.
- Listen as well as speak.
- Avoid personal attacks, name-calling, and attributing motivations to others.
- Speak for themselves and their organization or constituents.
- Hold the right to disagree and the responsibility to clearly articulate why they disagree and offer alternatives that might meet their and others’ interests.
- Negotiate in good faith

In the first meeting or meetings of the RAC, RAC members should review, revise as needed, and adopt such expectations as formal groundrules for participation.

Recommendation #10: The Secretary should establish expectations for RAC participation. RAC members should review, revise as needed, and adopt such expectations as formal groundrules for participation.

Committee Decision Rule

In addition to such expectations, the RAC will need a decision rule for how it goes about reaching agreement or specific recommendations. The decision rule also affects how people see the makeup and balance of the committee. That is, if the decision rule is majority vote, then stakeholders and the public will be very concerned about the exact number and make up of the committee, that is, who has the votes. If the decision rule is more consensus-based, the exact number of various members on the RAC becomes less important since agreement will take at least most committee members consent.

We recommend some kind of consensus-based approach to ensure active participation, broad support, inclusion, voice, and influence for a range of interests. Generally, while the RAC must make interim decisions on process and substance to keep deliberations moving, final consensus is sought only on the final package of recommendations since members may make careful tradeoffs between issues and topics, and while remaining dissatisfied with individual recommendations, be able to consent to an overall package because their most important interests are met in other parts of the package recommendations.

Options for a consensus approach include:

- *Full Consensus.* Every member of the RAC must consent, that is, to acknowledge they can “live with” the final recommendations. The advantage is that every member has equal power and the ability to hold up the decision-making until their interests are sufficiently met. The significant disadvantage is that any one member can hold up the actions and work of the RAC.
- *Consensus.* Consensus by the RAC can also be defined as the consent of most, or almost all, committee members in its final recommendations. No one member can stop the final deliberations and recommendations of the RAC, but in turn, almost all members of the RAC must consent for the recommendations to be considered consensus-based. While some committees set a specific number, usually well above even a supermajority (2/3rds) such as 12 of 15, or the like, others prefer to leave this somewhat vague and determine final “maximum” consensus at the end when they “see it.”

We recommend a “consensus” approach that seeks that all or almost all RAC members can “live with” the final package set of recommendations. The RAC would issue a final report with consensus as defined generally above to the greatest extent possible within the time and resources allocated to the RAC. Should the RAC not be able to reach consensus on some but not all issues, for those remaining areas of disagreement, the RAC would: 1) clearly delineate and explain the remaining differences of opinion; 2) narrow the options for that issue to the fewest degree and number possible; 3) delineate the pros and cons of each remaining options; 4) explain, as needed, how decisions on this or these outstanding items may or might affect areas of agreement elsewhere in the final report.

Recommendation #11: The Secretary should allow the RAC to utilize a “consensus” approach, which seeks to identify a final package of recommendations that all or almost all RAC members can “live with”. The RAC would issue a final report with consensus as defined generally above to the greatest extent possible within the time and resources allocated to the RAC.

Role of DNREC on the RAC

It is important to delineate the role of DNREC in this decision-making. CBI recommends that DNREC staff actively support and participate in the RAC deliberations, and that DNREC counsel from the DOJ provide legal assistance, including drafting, and advice to the RAC. The DNREC Secretary, who is ultimately responsible for promulgating Conversion Permit regulations, should participate in the work of the RAC, as should those members of their staff with responsibility for review of permit applications. It would be important for DNREC staff and the Secretary to clearly express any disagreement, explain why, be open to influence and negotiations, and to provide, like any other member, an alternative approach to meet the interests and concerns expressed. DNREC retains the final decision-making authority within Delaware’s administrative procedures, and will have to submit draft regulations for formal public comment, and involve, as required, the Coastal Zone Industrial Control Board. At the same time, if DNREC agrees to the final package of recommendations, it must commit to advancing and supporting the recommendations as the draft regulations move through the formal public hearing process.

If resources allow, a non-partisan facilitator should facilitate meetings and support the RAC and the committee chair throughout the process.

Recommendation #12: DNREC should actively support and participate in the RAC deliberations, and the DNREC counsel from the DOJ should provide legal assistance, including drafting, and advice to the RAC. If resources allow, a non-partisan facilitator should facilitate meetings and support the RAC and the committee chair throughout the process.

Issues to Cover in the Deliberations

Commenters identified a number of issues that the RAC would need to take up based on their reading of the changes to the Coastal Zone Act and their understanding of the issues. This is not necessarily a complete list of all the issues that the RAC might need to cover, but a starting point for DNREC and the RAC to build a work plan. We recommend that DNREC develop a draft work plan based on these issues identified in the assessment that the RAC would then review, revise as needed, and adopt a work plan. The issues identified included:

- **Definitions** and clarification on non-allowed uses spelled out in the amendments.
- The **provision that bulk product transfer** will be allowed (with permit) for products to be used within the Coastal Zone, or produced in the Coastal Zone

- What are the definitions and limitations to this bulk transfer? For instance, are natural gas liquids in or out?
- Detailing the **net environmental improvement or economic improvement** of the proposal
 - To what extent, detail, and scope must environmental and economic impact be reviewed?
 - Does environmental include public health and major public safety risks?
 - Amidst numerous issues, media, contaminants, and benefits on dollars, jobs, and environment, how would “net” actually be determined?
 - How will fenceline and directly affected communities’ impacts fit into this calculus?
- Establishing criteria to calculate and review **offset** proposals
 - Can clearer direction and criteria for offsets under the changes be established for these 14 sites and Conversion Permits?
 - What is the role of Emission Reduction Credits (ERCs) going forward?
 - How to ensure localized benefit to the extent possible for those in and near the Coastal Zone?
 - What is the baseline to which offsets will be determined, especially for sites with no current operational activity?
- Establishing criteria for ensuring **financial assurance** for environmental cleanup
 - What tools are available and achievable, not only for completing remediation during cleanup, but more importantly, in the long term for when a facility decades from now closes, for emergency response and spills, and for catastrophic events?
- Determining adequate preparation of the site for **sea level rise and coastal storms**
- Decision criteria for DNREC and the **general process** of decision-making
 - How can the process be as efficient and predictable as possible and lead to a timeline decision without extensive delay?
 - How can the process be thorough and deliberate within the timelines set in statute given that there will likely be few of these permits, but they will involve substantial changes and impacts to the Coastal Zone?
- **Monitoring and Enforcement**
 - Given DNREC’s constrained resources, how will it both review and consider permits adequately as well as meaningfully enforce provisions of any Conversion Permit once granted?
 - Who will monitor and enforce upon DNREC itself as to the commitments the agency makes in the RAC process and final agreement, should one be reached?
- What will be the role of the RAC for any **requests for a permit** that come before the Secretary **prior to promulgation** of final regulations?

Recommendation #13: DNREC should develop a draft work plan and timeline for the RAC’s work and the RAC should review, revise as needed, and adopt the work plan and timeline at one of its first meetings.

Appendices

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Appendix A: Initial Assessment Interview Participants

Name	Affiliation
Danene Birtell	Tri-State Bird Rescue and Research
Cerron Cade	Division of Small Business, Development, and Tourism - State of Delaware
Thomas Coleman	City of Newark, DE
Sarah Cooksey	The Nature Conservancy
Jay Cooperson	Sierra Club - Delaware Chapter
Jospeh Corrado, Sr.	Delaware Contractors Association
James DeChene	Delaware State Chamber of Commerce
John Deemer	Delaware City Refining Co, LLC
Keith Delaney	D2 Management
Rysheema Dixon	Wilmington City Council
Bill Dunn	CLNCC
Dick Fleming	Delaware Nature Society
Lorainne Fleming	Delaware Nature Society
Bill Freeborn	Delaware Contractors Association
Tim Gibbs	Delaware Academy of Medicine/Delaware Public Health Association
Thomas Godlewski	Delaware City Refining Co, LLC
Brenna Goggin	Delaware Nature Society
Nicole Goldsboro	American Lung Association
Rich Hall	New Castle County
Stephanie Hansen	Delaware General Assembly
Debra Heffernan	Delaware General Assembly
Rich Heffron	Delaware State Chamber of Commerce
Stephanie Herron	Sierra Club - Delaware Chapter
Ritchie Jones	The Nature Conservancy
Ken Kristl	Widener University
Susan Mack	Sierra Club - Delaware Chapter
James Maravelias	Delaware AFL-CIO
Guy Marcozzi	Duffield Associates, Inc.
Eugene McCoy	CCOBH
Paul Morrill	Committee of 100
Edward Osienki	Delaware General Assembly
Jennifer Prince	Committee of 100
Jordyn Pusey	Civic League for New Castle County
Matthew Sarvar	Delmarva Ornithological Society
Peggy Schultz	League of Women Voters of Delaware
Albert Shields	Delaware General Assembly
Victor Singer	Private Citizen
Lisa Smith	Tri-State Bird Rescue and Research

Kevin Stewart	American Lung Association
Various	University of Delaware - Delaware Environmental Institute
Bob Whetzel	Richards, Layton, and Finger
Martin Willis	Private Citizen
Marian Young	Brightfields, Inc.

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Appendix B: Public Workshops Summary

Coastal Zone Conversion Permit Act Public Workshops

DRAFT Workshops Summary

Workshops held November 29 & 30, 2017 in Wilmington and Delaware City, DE

Prepared by the Consensus Building Institute

WORKSHOPS IN BRIEF

The Delaware Department of Natural Resources and Environmental Control (DNREC) held two public workshops in November 2017 to obtain feedback on the statutory changes to the Coastal Zone Act (CZA) and the convening process for the regulation drafting. The workshops were held in Wilmington, DE on November 29, 2017 and Delaware City, DE on November 30, 2017. Approximately 50 individuals attended the Wilmington workshop, and approximately 30 individuals attended the Delaware City workshop.

Consistent with the Coastal Zone Conversion Permit Act (CZCPA), DNREC will set up and serve as the lead agency for a Regulatory Advisory Committee (RAC) that will support its development of the new regulations required by the passage of House Bill 190.

These workshops were intended to give the public an opportunity to provide input to DNREC on designing a collaborative process to develop regulations and, specifically, on the design and membership of the RAC. During the first part of each workshop, participants heard an overview of the statutory changes to the Coastal Zone Act, regulatory implications, and the convening process to date and had an opportunity to deliver public comments to the Secretary and staff of DNREC. Comments addressed these topics:

6. The CZCPA legislative process
7. The main provisions of the CZCPA legislation
8. The DNREC process for establishing regulations to implement the CZCPA (including the CBI stakeholder consultations to generate input on the development of the RAC)
9. Main factors for DNREC and others to consider in developing the CZCPA regulations
10. Other issues and comments

During the second part of each workshop, participants divided into small groups and provided feedback to DNREC on three key questions about convening the RAC:

- What stakeholder groups should be represented on the RAC?
- How should RAC members be selected?
- What role should the RAC play in the development of the regulations?

A list of workshop participants can be found at the end of this summary. All presentation slides and materials from the workshops can be found at de.gov/conversionpermits.

DISCUSSION – KEY THEMES

Below is a summary of public comments and key themes discussed at the workshops. This summary is not intended to be a transcript. Rather, it focuses on the main points covered during the discussions.

Remarks by DNREC Secretary Shawn M. Garvin

At the beginning of each workshop, DNREC Secretary Shawn M. Garvin offered welcoming remarks. He thanked participants for coming to the workshop and participating in this process. These workshops are one of the ways DNREC is seeking public feedback on what the regulation development process should look like. DNREC is particularly interested in hearing suggestions for how the agency can increase community engagement and inclusion during this process. The Secretary emphasized that he wants to run a transparent, inclusive, and focused process to meet the October 1, 2019 deadline for final regulations set in the CZCPA.

Overview of Statutory Changes, Regulatory Implications, and Convening Process To Date

Susan Love (DNREC) and David Fairman (Consensus Building Institute) presented an overview of the CZA statutory changes, regulatory implications, and the convening process to date. The presentation slides and supporting materials are available at de.gov/conversionpermits.

The CZA and regulatory implications of the Coastal Zone Conversion Permit Act

The Coastal Zone Act

The CZA was passed in 1971 under Governor Russell Peterson in response to significant industrial development pressure in Delaware Bay. The CZA established the boundaries of the Coastal Zone and prohibited new bulk product transfer (BPT) and new heavy industry in the Coastal Zone. It allowed heavy industry uses to continue and expand operations with a permit and allowed manufacturing with permits. The CZA directed DNREC to issue permits for these activities but required DNREC to consider environmental and economic impact, aesthetic effects, supporting facilities, and the effect on neighboring land uses and county plans in making its decisions. Four key terms used in the CZA are relevant to the upcoming regulation development process:

- Bulk product transfer facility – Any port or dock facility for transfer of bulk quantities of any substance from vessel to shore, shore to vessel, or vessel to vessel. It includes unincorporated, loose materials such as liquids, sand, gravel, and grain. BPT does not include containers or palletized items.
- Heavy industrial use – Heavy industrial use sites are characterized by property that is greater than 20 acres; contains smokestacks, tanks, distillation columns, scrubbing towers, etc.; and has the potential to pollute. Examples include oil refineries, steel manufacturing, petrochemical complexes, and paper mills.
- Manufacturing use – Manufacturing use sites are characterized by operations that include mechanical or chemical transformation into new products or assembling component parts. Examples include warehouses, garment factories, and auto assembly factories.

- Coastal Zone – The Coastal Zone is a region designated in the CZA that extends from Claymont to Fenwick, DE and includes the C&D Canal and inland bays. The CZA did not place any restrictions on commercial or residential development in the Coastal Zone.

The Coastal Zone Conversion Permit Act

The CZCPA was signed into law in August 2017 after passing the Delaware House and Senate by large margins. The law allows expanded uses on 14 existing heavy industry use sites; 13 of these sites are located in New Castle County and one site is located in Kent County. The CZCPA requires developers to obtain a “conversion permit” from DNREC for new or modified uses and requires DNREC to develop the appropriate regulations by October 1, 2019. The CZCPA allows the following expanded uses on the 14 designated sites: conversion of a site to an alternative heavy industry use, addition to a site of a heavy industry use, and operation of a new BPT facility. It maintains prohibitions against certain types of heavy industry (e.g. oil refinery, cellulosic pulp paper mill, incinerator, steel manufacturing plant) and adds liquefied natural gas terminals to its list of prohibited uses. New BPT is allowed with a Conversion Permit under limited circumstances:

- Must be on one of the 14 sites
- Must have had a docking facility in 1971
- Bulk products must be fully used at a facility in the Coastal Zone or must be produced in the Coastal Zone.

One exception is grain, which can be transferred without regard to use in the Coastal Zone. Currently, seven of the 14 facilities have docks and a total of nine would be allowed to support BPT under the new law.

Coastal Zone permits will still be issued for expansion of existing heavy industry and manufacturing. A Conversion Permit will be required for the new uses described above and will have eight additional requirements for applicants to meet:

- Demonstrate net environmental benefit
- Explain the effect of the new use on neighboring land uses
- Must offset increased emissions annually
- Must prepare for sea level rise and storms
- Must provide financial assurance
- Shall agree to pay for cost of compliance for cleanup

Regulations governing Delaware’s Coastal Zone

Although the CZA was passed in 1971, the first regulations to guide implementation and enforcement of the law were written in 1999. The regulations provide additional definitions; clarify prohibited uses, allowable uses, and uses requiring permits; and outline permitting procedures such as application contents, review process and permit fees, and public notice and hearing requirements. The CZCPA directed DNREC to promulgate regulations for Conversion Permits by October 1, 2019. The current regulations governing Delaware’s Coastal Zone will be amended to incorporate Conversion Permits. This will require amending certain sections and drafting new sections but DNREC has made clear that only sections pertinent to Conversion Permits will be amended or added. Developers may submit applications for Conversion permits prior to the promulgation of regulations.

Next steps

DNREC has committed to the following next steps in this process:

- Establish a Regulatory Advisory Committee (RAC) to assist and provide feedback to DNREC during development of the new regulations.
- Ensure the RAC meets routinely and all meetings are open to the public.
- Hold additional public workshops in various locations throughout the state and including affected communities.
- Publish initial draft regulations in the Delaware Register, followed by public hearings.
- Follow the Administrative Procedures Act.

Convening process to date

Mr. Fairman (CBI) reviewed DNREC's convening process to date and clarified how feedback from the initial assessment interviews, two public workshops, and written public comments will be used to inform CBI's recommendations report to DNREC on convening the RAC. In October, DNREC retained CBI to assist the agency with assessing stakeholder concerns and opinions about setting up a RAC. CBI is a non-profit collaborative services organization based in Cambridge, MA. CBI staff supported DNREC and the advisory committee that developed the original framework for CZA regulations in the late 1990s.

CBI conducted interviews in-person and by phone in October and November 2017 to gather initial advice on how DNREC could establish the process for collaboratively developing regulations for Conversion Permits. DNREC invited a number of stakeholder groups to participate in interviews as a preliminary step in the process. The initial list of interviewees was developed by reviewing the organizations who gave testimony to the General Assembly and the membership of the late 1990s committee. CBI and DNREC attempted to select a representative mix of stakeholders for this first set of interviews. In their interviews, CBI asked interviewees to suggest additional individuals or groups they should speak with. Additional interviewees also self-identified or were identified by researching particular stakeholder groups online. Some of those invited to interview with CBI chose to decline. The final list of interviewees included representatives of environmental organizations, elected bodies, municipalities, businesses, consulting firms, trade associations, civic associations, and private citizens. CBI conducted 31 interviews, some with individuals and some in small groups of individuals from the same or similar stakeholder groups. Interviews were conducted on a non-attribution basis, meaning CBI will not quote any individual or organization in its report.

Two public workshops were designed to provide opportunities for more stakeholders to participate in this initial phase of the process, help ensure greater inclusion and transparency, and obtain further input on establishing the process for collaboratively developing regulations. The input-gathering opportunities will consist of a public comment session and small, facilitated discussion groups at each workshop.

CBI will consider all comments heard during the initial assessment interviews, the two public workshops, and any written public comments as it drafts its recommendations report for DNREC. DNREC will then take all that they have heard and CBI's final report into account as they identify the path forward. DNREC has laid out the following timeline for this process:

- **December 7, 2017:** Deadline for public input to CBI’s draft recommendations report
- **December 22, 2017:** CBI releases its draft recommendations report
- **January 19, 2018:** Deadline for DNREC and public comment on CBI’s draft recommendations report. (This was revised from January 8, 2018 after DNREC heard feedback at the first public workshop on the need for a longer comment period.)
- **January 31, 2018:** CBI releases its final recommendations report to DNREC and the public.
- **February 2018:** *DNREC reviews CBI final report and begins to establish the RAC.*

Public Comment and Listening by DNREC

Public comment overview

Workshop participants delivered the following public comments to the Secretary and staff of DNREC. The comments covered individual and organizations’ views on the changes to the Act, thoughts on the contents of the new regulations, and suggestions for convening the RAC. The following table summarizes common themes expressed by participants:

Theme	Specific issues
The CZCPA legislative process	<ul style="list-style-type: none"> • Anger over the lack of public participation and transparency during the development and passage of H.B. 190.
The main provisions of the CZCPA legislation	<ul style="list-style-type: none"> • Concerns about increased risk of oil and chemical spills due to the bulk product transfer (BPT) provision. • The opportunity to bring good jobs to Delaware while maintaining appropriate environmental safeguards and remediating polluted sites.
DNREC’s process for establishing regulations to implement the CZCPA (including the CBI initial assessment interviews to generate input on the development of the RAC)	<ul style="list-style-type: none"> • Concerns about DNREC’s engagement with affected communities to-date and the agency’s past responses to community concerns. • The need for sufficient technical resources to support community representatives on the RAC. • The need for community representation on the RAC. • Process transparency and sufficient notification. • Ensuring RAC members are credible. • Concerns about the power and

	<p>education differential between stakeholder groups.</p> <ul style="list-style-type: none"> • Developing criteria for RAC membership (e.g. strong public health and scientific backgrounds). • Addressing conflicts of interest on the RAC. • The need to follow public meeting best practices by holding meetings at convenient times in convenient places.
Main factors for DNREC and others to consider in developing the CZCPA regulations	<ul style="list-style-type: none"> • Cumulative health impacts and disparities in communities near the 14 sites. • Safety and noise along major transportation corridors (e.g. train traffic in Newark). • The need for comprehensive baseline data. • Conversion Permit application requirements. • The need to consider all aspects of potentially-impacted communities, including employment and health.
Other issues and comments	<ul style="list-style-type: none"> • Concerns about DNREC's capacity to monitor and enforce new and existing activities on the 14 sites. • Prioritizing cleanup in legacy communities and sites before redeveloping the 14 sites. • Concerns about DNREC approving a conversion permit before the new regulations are finalized.

Public comments

The notes below attempt to capture the concerns and opinions expressed by each individual or organization but they are not intended to be a transcript. Comments by individuals who attended both workshops are combined into one statement.

Speaker 1

- The regulations will need to clarify which bulk product transfer clauses, if any, apply to the Port of Wilmington.
- Question 1 (stakeholder groups): Public health representatives and members with strong scientific backgrounds should be included in the RAC.

- Question 3 (the RAC's role): The RAC's role should be a combination of all four options. Some areas may be best handled through developing broad principles. The RAC should also review regulation drafts as DNREC develops them.

Speaker 2

- Our community is located between a large number of industries and has been actively involved in cleanup and redevelopment efforts. For example, our community brought to the attention of DNREC the illegal hauling of contamination and other illegal products from former radioactive sites and from New Jersey.
- We have entered into litigation and won when some of these companies have not followed good practices. In those cases and in the ongoing cleanup of Hamilton Park, we have received scientific and technical support from DNREC, the EPA and research institutions like the University of Maryland, Johns Hopkins University, and Princeton University. We currently maintain scientific records to support ongoing remediation projects.
- I am concerned about DNREC's ability to perform monitoring and maintenance under the revised Act. They have never been a real part of monitoring and maintenance in the past. We have had to do this ourselves and bring in experts sometimes. What will be DNREC's role and the role of communities going forward?

Speaker 3

- Audience poll:
 - Who here lives in the Route 9 corridor? 2.
 - Who here is DNREC staff? 6.
 - Who here lives in this community? 1.
- This process is deeply flawed. We are challenging DNREC on the way you include communities. This process is a failure because you have not had impacted communities involved in this process from the start. I am asking you to pump the brake and reach out to the communities so those most impacted can be here to speak.
- Public health concerns: Our biggest challenge is cleaning up the 14 sites and legacy communities; there needs to be a plan to clean up these sites and communities now. We need to prioritize these legacy communities and help them bring in healthy and holistic businesses. We recently released a report called "[Environmental Justice for Delaware: Mitigating Toxic Pollution in New Castle County Communities](#)". We got push back from Delaware Health and Social Services (DHSS). They said we should just exercise and eat better but that is not what we are saying. These chemicals are carcinogens. There are 14 grandfathered sites in areas with high health and mortality disparities.
 - We have partnered with the Union of Concerned Scientists. We have also gotten help from a number of schools and research groups. We have requested and are still waiting for a meeting with Secretary Garvin and DHSS. We request a day-long meeting.
- Monitoring: It is good that people are monitoring their own communities and making the causal connections but DNREC should be leading this. What is the ongoing monitoring plan for these communities?
- The current reporting process to DNREC and their enforcement response is a challenge for us. If people are not being responded to when they call and report issues (e.g.

sickness), if you have not answered in the past, they are not going to return your call for engagement in this process.

- We support protecting birds but we also need to consider the workers and residents.
- We know people need jobs but we want healthy jobs. We need to prioritize renewable energy, safer chemicals, and safer processes.
- The Act says industries “must prepare for sea level rise” – what must they do?
- What is DNREC’s plan for these sites if there is a disaster like a hurricane or an earthquake? Do community members have evacuation plans?
- Is there legacy clean up at the Diamond Salvage site? We need to mitigate the legacy pollution.
- Is there a plan to make the Port of Wilmington green (but not whitewashed green)? We need processes and funding in place to clean up this site. I am concerned about respiratory issues, health disparities, and blight disparity near this site.
- Question 1: Impacted community members and fishermen should be on the RAC. They will need technical resources to support them and these cannot just be given to them by DNREC. These folks cannot just be at the table; they need to know what is being discussed.

Speaker 4

- Each conversion permit application should specify a company, a proposed use, and a parcel of land. DNREC should take this information to a public hearing before it approves or disapproves the application. Any necessary remediation should be disclosed in the permitting process. Any change in the company, the proposed use, or footprint should require a new permit. There should not be a waiver for the whole site to let industry do whatever they want.
- If the applying company does not act on an approved permit for longer than a year, they should be required to resubmit their application.

Speaker 5

- CZA has played a major role in the region’s health. It was visionary piece of legislation.
- PDE wants to be a part of these conversations going forward. As a National Estuary Program, our core values include stakeholder input and we want to help foster this. We usually do not take stances on issues but would like to contribute our expertise.
- DNREC should think about where there are opportunities to use natural infrastructure.

Speaker 6

- I want to make sure I’m not sailing with oil tankers and chemical transfer boats.
- Oil spills have affected our river and killed all our fish. We have had oil on the bottom of our boats.
- Much of New Castle County is based on artesian wells. Many of these have been contaminated. I have maps and data with me today. These are the facts. It shows the wells that were contaminated and where they are related to landfills. They had to close some of these wells by Route 9 and pumped in water from another area. How much more can we allow?

- We have one of the highest cancer rates in the nation. I think they put extra contamination into the air on cloudy days. My mom died of COPD. She walked in the park by the landfill. She never smoked.
- What is the total number of DNREC staff conducting smokestack monitoring? How many stacks do they monitor? How many groundwater monitoring stations are there and where are they? How many staff members produce the groundwater monitoring program reports? Where are these pieces in relation to the 14 sites?
- I do not trust this nonsense. I hope we can stop some of what is about to happen.

Speaker 7

- It was a shame there were no public workshops before H.B. 190 was passed. But the horse is out of the barn now. They did not consult neighboring communities before passing the bill – this was inexcusable. There was very little public input and opportunity to comment.
- I encourage DNREC to have a broad range of people included on RAC. It should have residents of neighborhoods, tourism, health organizations, and recreational fishing. It should not consist of just the businesses that want to locate there.
- I encourage Sec. Garvin, within his discretion, not to approve conversion permits before the new regulations are in place.
- The RAC needs solid technical and scientific support to do their work.

Speaker 8

- I am worried about transparency. People were skipped and communities were not involved during the development of H.B. 190. These workshops are happening after the November 1 deadline. We have been given 2 weeks notice for this meeting. You want to finish this process by Christmas. We need 30 days notice for meetings. This does not look good to us. In the earlier interviews, it was just business and environmental folks, not community members. I am worried the regulations process will be the same. How do we know the rules of the RAC will be followed?
- On the RAC, we need to have the same number of community members as business members.
- Any communication needs to go out to the communities in layman's terms.
- We need health monitoring and reports. There are people who live here who do not know about these cumulative impact and other concerns. People need to be responded to when they ask DNREC for information.
- Is this the future? How many jobs will these conversion permits really bring? Are these worth the health issues? We are not going back to building ships on the river. I do not think this approach is the solution for the future.

Speaker 9

- I am a union boilermaker by trade and I cannot go to work in DE unless the revised Act goes forward. I have been asking the government to change these regulations for years. The regulations prevented industry from coming back to the state of DE. I was ecstatic when the bill was passed. It will bring economic development with environmental safeguards. These are not just jobs; they are careers.

- This permitting process is going to be one of the most stringent in the Northeast. This is the gold standard for permits in the U.S. Now we have even more safeguards. I think this Act the best way forward.
- In response to others' concerns about community input, that's why we elect representatives to go to Dover. 52 of 60 voted for this bill.
- I want the Port of Wilmington to remain exempted.
- The footprints of the 14 sites need to be updated; they are not accurate and they will need to be for us to move forward.
- I want to remind everyone that the Delaware River has been a working river for centuries. No one is getting their drinking water from the river.
- I felt like I had sufficient notice for these workshops.
- I have been hearing about a lack of transparency in this process. Look at DNREC's chart which has information on the 14 sites. It tells you what is happening on these sites, what chemicals were on the sites. This is transparency.
- Only two of these sites have applied for permits in the last five years.

Speaker 10

- I second previous speakers.
- Question 1: Communities, particularly those next to the 14 sites and along the rail lines, are the number one stakeholder. They will be directly impacted by ambient pollution, accidents, etc. They must be adequately and directly represented on the RAC and provided with the resources to understand the technical work. Recreation and tourism is a big economic driver here. Recreation is also specifically protected in the CZA. Fishermen should be represented too. Where would these go? Do they go under business? The three categories are great but broad and vague.
- Question 2: I support Option #2. It is key that the nomination process be fully transparent and inclusive. All nominations should be made public and people should be allowed to comment on them before the final selection is made. DNREC should avoid appointing members with conflicts of interest (e.g. owner or operator of one of the 14 sites). We cannot avoid all conflicts of interest but if they can't be avoided, they need to be explicit and relevant members may need to recuse themselves from some decisions.
- Question 3: I like a combination of the four options like Jay Cooperson said but the RAC should be deeply involved in broad principles and options. DNREC should hold RAC meetings at good times (e.g. evenings) and locations for all members. Meetings should be accessible by public transportation. Enforceability is key and DNREC must be accountable to the RAC for following through on their recommendations.

Speaker 11

- I am concerned about BPT provision and the pollution it could cause if a spill occurred.
- I live in Newark very close to the train tracks. There is the possibility of accidents for students and my neighbors with heavier train traffic.
- We need good baseline data about pollution at the beginning of this process. Let's slow down to collect this.

- We need more meetings and community involvement. This process has been flawed. I testified in front of the Senate but it was already a done deal. It was done behind closed doors. This does not feel transparent or inclusive.

Speaker 12

- We should think about the economy and the environment. We should think about the families trying to survive here and look at the big picture. We should think about all aspects of this community. I am glad something is being done. Cleaning up some of these areas and bringing jobs back to the state is crucial. I support the environment but it has been polluted for years. How can we develop these sites and provide a boost to the economy? We should monitor communities and make sure DNREC is protecting the environment but maybe we can improve our communities so they are more usable. We should not leave dirty sites, there's no benefit to that, but our economy is suffering here in DE. I am looking forward to the next steps.
- Communities, labor, and environmental groups should be represented on the RAC.

Speaker 13

- DNREC should revisit the report comment timeline: CBI and DNREC have 26 days to put together the report but the public has 2 weeks (essentially 5 business days) to offer public comment on the report. I know the legislation puts forward an ambitious timeline. This is setting a dangerous precedent for the RAC process. I strongly recommend you revisit this timeline.

Speaker 14

- The people in the Route 9 corridor do not know what is happening in terms of the environment and the Act. What have DNREC, businesses, and others done to reach out to these communities? Were there community surveys? How did you invite them to this meeting? This is a problem: we are speaking for people who can speak for themselves. We just have to reach out.
- Jobs are important but I do not want to die for them. We can clean up the environment and develop clean jobs. Let's work together and find a solution.

Speaker 15

- Star Enterprises started operating a few years ago and overnight the noise and diesel fumes increased. My niece lives close to the railyard. When the oil cars started moving around in the railyard it got really noisy for her. This law will continue to increase the noise in the railyard which is disruptive for the citizens. We also have safety concerns but it has been years since there was a serious accident on the rail line.

Speaker 16

- *I want to echo previous speakers about the importance transparency and public involvement.*
- *Thank you for holding this workshop but it was not close enough to where I live.*

Speaker 17

- I testified about H.B. 190 in Dover. From Day 1 the bill was focused on jobs.

- What is the definition of “environmental groups” for CBI and DNREC? Mothers, workers, etc all count under this definition. There is a long list of chemicals at these sites to remediate so we need community and public health involvement on the RAC.
- Jobs versus the environment is a false choice.
- We were promised transparency after the bill passed.

Speaker 18

- I am glad to see DNREC is starting to engage communities. We need a process we can be proud of: open, transparent, and accountable. Not one with “confidential interviews” and “small group discussions” where voices are edited or summarized.
- I am not sure a RAC is the appropriate format for this charge. The committee in the 1990s did not achieve the outcomes that were actually developed. Why should we expect things to be different now?
- If we do have RAC, it must include:
 - Fenceline communities near the 14 sites as well as communities along rail lines, storage, and transit lines. They will be impacted even though they are technically outside the Coastal Zone.
 - A balance of stakeholders.
 - Representatives from the health community with expertise in fenceline emissions and legacy pollution.
 - Representatives of coastal zone users (e.g. recreational users). Their interests are protected under the CZA.
- To avoid conflicts of interest, the RAC should not include:
 - Individuals who would benefit financially or whose employer would benefit financially from the regulations. DNREC should exclude anyone representing the 14 sites
 - Representatives from organizations who accept state funds for their programs. There is too much conflict between access to program resources and the need to have hard discussions at the table.
- RAC meetings should:
 - Be held in affected communities, not Dover.
 - Be held at convenient times.
 - Accept public comment at each meeting,
 - Not include small group discussions where we cannot hear everything.
 - Be recorded and posted online.

Speaker 19

- The original CZA regulations were developed in the 1990s. They needed consensus and CBI helped them get there. Industry got the flexibility they sought but the environmental members wanted data (i.e. an environmental indicator program) to track improvement in the CZ. This was in the original MOU and regulations but the program was never implemented. So now we cannot tell how the CZ is changing. We are uneasy based on the 1990s process and DE’s current financial situation.
- A lot of weight is given to offsets but I am not sure these are working.

Speaker 20

- Under H.B. 190, the Port of Wilmington BPT status appears to have legal discrepancies. HB190 added a definition that was “heavy industry use site” and defined the 14 sites. It provided for BPT activity on the sites subject to permitting requirements as long as transfer requirements are met. The Port of Wilmington is one of these sites. Originally it was exempted from the CZA but H.B. 190 includes new language for this site. Based on the new language, I believe any BPT activity at the port has been illegal since August 2, 2017. When will the Secretary enforce this language?

Speaker 21

- I echo many others here tonight. I am very impressed with knowledge and awareness of this group and hope DNREC takes advantage of the offerings they are making tonight.

Speaker 22

- DNREC needs to do more and better public engagement. The public was not given a chance to give input on H.B. 190 and the list of interviewees. Two weeks notice for these workshops was not enough. We need four public hearings in impacted areas and allow for written submissions. DNREC can fit this into its timeline. I have a petition signed by 128 individuals who feel this process has been inadequate. This is not what transparency or inclusiveness looks like.

Speaker 23

- Why do we need this process? We have a CZA. If DNREC was doing its job properly, we would not have pollution issues. The CZA was supposed to protect our quality of life but we do not have that because past pollution has not been taking care of. DNREC has issued miniscule fines for violations in the past and is not doing its jobs.
- I concerned about the vague language in H.B. 190.
- Developers are allowed to submit conversion permit applications before the regulations are written – what will happen if they do?
- The Delaware Way is getting in our way as citizens.

Speaker 24

- DNREC and CBI were handed a bad bill and process. I worked on the regulations in the 1990s. We failed then because of the process that was set up. We did not have technical ability on the committee and the agreement was finalized with compromises that would not work (e.g. we found out later that the environmental indicators were not feasible). That was a deliberate deception by DNREC to get the new regulations passed.
- The detailed General Assembly transcript and any commitments made during that process should be made public. Concerns voiced during that process should be addressed.
- DNREC should develop meaningful and effective criteria for membership. Community and environmental justice expertise was lacking in the 1990s. Do not focus on who needs to be on the RAC – think about the functional process for the RAC.
- We need a more robust and perhaps parallel community outreach process. What is our definition of “meaningful” involvement? It is often difficult to get community members to attend meetings. We may also have literacy issues. DNREC must do much more than it is currently doing; they should consider hiring a full time environmental/environmental

justice advocate for these communities. It takes a high level of expertise to work on these topics so communities end up being manipulated by government employees or industrial representatives who have lawyers and engineers to advise them. There is an imbalance so DNREC has to do more.

- What is the role of the Coastal Zone Industrial Control Board in this process?
- We should debate the criteria for RAC membership rather than moving straight into identifying members. DNREC needs to develop meaningful and effective criteria for membership on the RAC before identifying candidates. There is a high knowledge prerequisite for participation in this process. I have identified several questions to start this discussion:
 - What are the ethical requirements and potential conflicts of interest? (Where can we find unbiased experts? Who can address the community health concerns?)
 - No industry or developer that stands to profit should be a voting member.
 - No environmental organization that receives public funds from a state or federal program should be a voting member.
 - What are the types of expertise required (e.g. industrial process, community health)
 - What credentials are required?
 - What is the selection process to ensure this is not a political process?

Speaker 25

- A likely shortcoming of this process is that very few of the people who are actively involved in environmental, civic, and community organizations have the technical background specific to these sites (e.g. dioxins). It is not fair when other stakeholders have this technical background. Communities need significant technical representation. I am concerned about the potential for less stringent and less structured changes to current regulations if we do not have technical representation from community, environment, and civic groups.
- Current clean up plans for these sites are inadequate.

Facilitated Small Group Discussion on the Regulatory Advisory Committee

Workshop participants divided themselves into small groups to provide feedback on three key questions DNREC must answer as it sets up the RAC. Their feedback is summarized below by question.

Question #1: What stakeholder groups should be represented on the RAC?

Workshop participants were asked to consider three proposed categories of stakeholder sectors from which RAC members could be selected:

- **Community** (e.g. counties, municipalities, civic associations, neighborhoods)
- **Environment, environmental justice, and public health**
- **Business and industry** (e.g. statewide groups or trade associations, individual businesses, labor unions, small businesses, and/or their consultants)

To start the discussion, participants were first asked to consider their answer to the following sub-question: *“If you are here tonight representing an organization or group of stakeholders, does your group fit within one of these categories?”* In small groups, participants were then asked to provide their feedback on the following two sub-questions:

- *“Is there a key stakeholder category that is not covered under the three above?”*
- *“Are there key organizations or stakeholders that you think need to be involved in some way in the Committee, especially newer or lesser known groups? If so, please name them specifically.”*

Workshop participants gave the following feedback, grouped by theme:

- Categories – Participants generally felt that the categories were broad enough that all stakeholders could be covered by one of the categories. Additional or expanded categories may be necessary to cover representatives of the tourism, agriculture, research/technical, educational, and fishing sectors.
- RAC facilitation – Participants emphasized the need for a neutral third party to facilitate the process.
- Community representation – There was strong agreement that communities should be represented on the RAC. The number of community representatives should equal or exceed the number of industry representatives.
- Need for a RAC – One comment was that a RAC is not necessary. DNREC’s drafting and the required public comment periods for new regulations should be sufficient.
- Key stakeholder groups to be represented on the RAC -
 - Communities near the 14 sites and along major transportation routes (e.g. Newark rail line).
 - Environmental justice
 - Public health with experience in environmental justice and health
 - Fishing (commercial and recreational)
 - Tourism and eco-tourism
 - Businesses with interests in the 14 sites (Some participants agreed with this while other strongly disagreed. One possibility is to have these businesses represented by an appropriate umbrella organization.)
 - Kent and Sussex Counties (Some participants disagreed with this given that all but one of the 14 sites are located in New Castle County.)
 - Civic associations, particularly umbrella civic organizations
 - Recreational and non-extractive Coastal Zone users (e.g. boating)
 - Environmental advocacy, conservation, and restoration (e.g. wildlife protection)
 - Private citizens
 - Public advocates
 - Scientific advisors/technical experts (not DNREC staff)
 - Environmental remediation experts
 - Legal experts (e.g. redevelopment, contaminated sites, environmental justice, public health) *Advisory capacity*
 - Financial experts (e.g. financial assurances) *Advisory capacity*
 - First responders and emergency planning
 - Navigation safety (e.g. Coast Guard)
 - Academic and research institutions (e.g. University of Delaware)

- Labor
- The Port of Wilmington
- Trade associations
- Land use planning experts
- Churches and religious groups
- DE Department of Justice
- Local officials (e.g. county and city)
- New industries (e.g. solar, wind, clean technology)
- Stakeholders not to include on the RAC –
 - General Assembly members
 - State-level elected officials

Participants also wrote down the names of specific organizations, groups, or neighborhoods they thought should serve on or be represented on the RAC:

- Delaware Coalition for Open Government
- League of Women Voters of Delaware
- Council of Civic Organizations of Brandywine 100 (CCOBH)
- Civic League of New Castle County
- Greater Hockessin Civic League
- Rose Hill Community Center
- Claymont Renaissance Organization
- Claymont
- Citizen Advisory Committee (did not clarify which one)
- Delaware City residents
- American Institute of Architects: Delaware Chapter (AIA Delaware)
- American Council of Engineering Companies of Delaware (ACEC/DE)
- Associated Builders and Contractors
- Artesian Resources
- Claymont Dust Study Team
- Delaware City Environmental Coalition
- Sierra Club: Delaware Chapter
- Delaware Riverkeeper Network
- Ocean Conservancy
- Delaware Audubon Society
- Delaware Coalition for Environmental Justice
- New Castle Sailing Club
- University of Delaware College of Marine Studies
- Delaware State University
- Delaware Water Resources Center at the University of Delaware

Question #2: How should RAC members be selected?

The RAC members should be selected in a manner that ensures a group with diverse interests and a manageable number of members. DNREC and CBI have identified three possible options:

- **Option 1 – DNREC selects members:** Under each stakeholder category, the DNREC Secretary identifies and appoints members and alternates to the Committee.
- **Option 2 – Nomination process, then DNREC selects members:** The DNREC Secretary will establish a nomination process for each stakeholder category. Interested parties can nominate potential representatives (self-nominations would be accepted as well) to the Committee during a period of time in early 2018. The DNREC Secretary will review the nominations and select members and alternates from the pool of nominees.
- **Option 3 – Another approach?**

In small groups, participants were then asked to provide their feedback on three sub-questions. Participant feedback is compiled and summarized below each question:

“What do you see as the merits, pros, and cons of each option?”

Option	Pros	Cons
Option 1: DNREC selects members	<ul style="list-style-type: none"> • Quick process • Process used for the RAC in the 1990s 	<ul style="list-style-type: none"> • Lose transparency • “Usual suspects”/loudest voices will be on the RAC • Not objective • Approach may be unpopular and decrease trust in DNREC • Choices may be unpopular • Could jeopardize credibility of the process • Risk of too many insiders
Option 2: Nominations process, then DNREC selects members	<ul style="list-style-type: none"> • Quick process • More transparent • Stakeholders may be able to provide input on the candidates • The public may “feel” represented • Gives the public a voice • Promotes diversity • Greater stakeholder involvement 	<ul style="list-style-type: none"> • Potential for DNREC to disregard the nominations • Final list may include the “usual suspects” • Risk of too many insiders • Nomination process may feel disingenuous • Too much discretion for DNREC • Nomination process may not result in the right balance • Would require significant outreach efforts
Option 3E (see below): DNREC/organizations select members	<ul style="list-style-type: none"> • DNREC could ensure the right balance of stakeholder groups 	

“Is there another approach DNREC should consider?”

- A. Each legislator from the Coastal Zone and Newark could nominate RAC members.
- B. Ask the General Assembly to pass a new law outlining how RAC members should be appointed (e.g. by the Governor, county leaders or mayors)
- C. The public could consider a broad field of candidates and select members by voting online or endorsements.
- D. Use an approach modeled after the Underground Storage Tank regulatory process: a large formal group (around 50 people) is convened and the public is allowed to comment and participate to the extent of their interest.
- E. DNREC selects organizations and communities and they designate their representative on the RAC.
- F. Interested parties are nominated within stakeholder groups and a lottery determines the final candidate.

“Which option do you prefer for selecting representatives and why?”

Participants overwhelmingly favored Option 2 over Option 1. There was limited discussion of the alternative approaches (Options 3A-3G). Three groups felt strongly that Option 2 should include opportunities for the public to comment on the list of candidates and final selections. DNREC should consider public input before making final selections and publish a rationale for its decisions.

Additional feedback on the nomination and selection process

- Self nomination – DNREC should allow self-nominations.
- Notification of call for nominations– Participants urged DNREC to widely publicize the call for nominations and not rely only on press releases and the CZA website. DNREC should reach out to affected communities to solicit nominations.
- DNREC’s role in the selection process – One group of participants felt that DNREC’s role should be minimized during the selection process due to general skepticism about this process and the agency itself. This group preferred Option 3C which allows the public to take the lead in nominating and selecting RAC members.
- Nomination/disclosure of conflicts of interest form – DNREC should develop a standard nomination/disclosure form that all nominees must fill out. Completed forms should be made public. The nomination portion should include information about relevant experience and credentials for representing an organization or stakeholder group. DNREC should require candidates to disclose any potential conflicts of interest. These could include any relevant background, business interests, political connections, ties to the 14 sites, funding from DNREC and other state agencies, and community connections.
- RAC size – DNREC should be flexible about the number of RAC members to allow for the inclusion of new stakeholders or the need to have an odd number of members. Participants generally felt that 15-20 members was the right amount.
- RAC composition –Many participants emphasized the importance of strong representation from affected communities and striking the right balance of interests. One group felt that a balanced RAC is more important than the specific selection process chosen.

- RAC membership criteria – DNREC should develop clear criteria for RAC membership before the nomination process opens:
 - Members should be committed to the process and expectations for their participation (e.g. time commitment) should be clearly spelled out.
 - Members should have the proper credentials to represent their organization or stakeholder group.
 - The RAC should include representation from the entire state but should be weighted towards those representing New Castle County. There was some disagreement about including anyone from Sussex County.
 - Members should represent a variety of generations.
 - Members should have an alternate.

Question #3: What role should the RAC play in the development of regulations?

DNREC and CBI have identified at least four possible roles for the RAC to play in the development of new regulations:

- **Option 1 – Develop draft regulations:** Develop draft suggested regulations and provide them to DNREC to finalize.
- **Option 2 – Specific guidance:** Provide specific guidance on regulation content and goals.
- **Option 3 – Broad principles and options:** Provide broad principles and options for DNREC to consider in drafting regulations.
- **Option 4 – Feedback to DNREC drafts:** Provide reactions and feedback to DNREC drafts and process throughout regulatory process. This strategy may be combined with any other option(s).
- **Option 5 – Another approach?**

In small groups, participants were then asked to provide their feedback on three sub-questions. Participant feedback is compiled and summarized below each question:

“What do you see as the merits, pros, and cons of each option?”

Option	Pros	Cons
Option 1: Draft regulations	<ul style="list-style-type: none"> • RAC has control of all substance • Maximum public input • All voices will be heard • Could fully utilize the expertise of all members 	<ul style="list-style-type: none"> • RAC may lack the necessary expertise • May not be feasible • Consensus may be difficult to achieve • Time-consuming • Task is too detailed for a large group • Risk of getting bogged down in the weeds
Option 2: Specific guidance	<ul style="list-style-type: none"> • Retain influence over regulations • Maximum feasible public input 	<ul style="list-style-type: none"> • Guidance may be ignored • RAC may lack the necessary expertise

	<ul style="list-style-type: none"> • Prioritizes would be addressed • Could fully utilize the expertise of all members 	<ul style="list-style-type: none"> • Consensus may be difficult to achieve • Risk of getting bogged down in the weeds • Lack of control for the RAC
Option 3: Broad principles and options	<ul style="list-style-type: none"> • DNREC has the expertise to lead drafting • Sets the tone and forces DNREC to focus on key factors from the outset 	<ul style="list-style-type: none"> • Virtually no RAC control over regulations • Too broad • Time-consuming to discuss theoretical arguments that may never affect the actual regulations • May promote discord at the expense of progress.
Option 4: Feedback to DNREC drafts	<ul style="list-style-type: none"> • RAC retains ability to influence the regulations • DNREC has the expertise to lead drafting • May be easier to reach consensus • How many other committees operate • Creates a role for the RAC in fine-tune (or rejecting) draft regulations before they are finalized 	<ul style="list-style-type: none"> • DNREC could ignore feedback • Members and the public may feel like they did not have input • DNREC leads drafting which could put the RAC on a weaker footing
Option 5A (see below): Phased approach (first option 3, then 2, then 4, then 1)	<ul style="list-style-type: none"> • Move from broad to specific • RAC writes the final regulations 	<ul style="list-style-type: none"> • Time-consuming • Likely would not fit in DNREC's required timeframe

"Is there another approach DNREC should consider?"

- A. Phased approach from Option 3, to Option 2, to Option 4. Utilize Option 1 if necessary.
- B. Option 2 using Option 4 throughout. RAC develops guidance document and seeks public input on it. Then DNREC provides its comments and it goes back to RAC for review and further refinement. Community engagement should be included throughout.
- C. Phased approach from Option 2 to Option 4. The RAC would supply more direction to the regulation contents at the beginning of the process. As DNREC develops draft regulations, the RAC would ensure their directions are being followed and would have a final say on the regulations. This approach may be determined by the makeup of and expertise on the RAC.
- D. DNREC takes the first cut to incorporate the Act into existing regulations. RAC then decides to either use this draft as their starting point or write a standalone regulation.
- E. Combine Option 2 or 3 with Option 4.

“Which option do you prefer for the RAC’s role, and why?”

Participant input on this question was highly varied with no clear consensus on the best approach. Most groups agreed that Option 4 should be utilized in any scenario, as DNREC has the knowledge and skills to draft regulatory language. Some groups preferred Options 1 and 2 to retain control of the regulatory language while others were firmly against this option because it was likely time-consuming and not feasible. One group strongly disliked Option 3 because the RAC would not retain enough control over the regulations. Another group disliked DNREC serving as the lead drafter in Option 4. A small number of participants preferred only Option 4.

Additional feedback on the RAC’s role

- Early clarity on RAC’s role – Participants felt that the RAC’s role should be decided and communicated before it begins its work and preferably before the nomination process begins.
- Resources – Participants felt that the RAC would need legal and technical support from outside sources on particular questions.
- Ongoing role for the RAC – One group felt that the RAC should have a continuing role in implementation and enforcement of the regulations, though this is arguably the role that the Coastal Zone Industrial Control Board should play.

Final Thoughts

Secretary Garvin closed both workshops by offering a few final thoughts. He heard clearly the concerns about legacy pollution in communities in the coastal zone and the need to continue remediation of the 14 sites. He was encouraged by the spirited debate amongst workshop participants on the three questions DNREC must answer about convening the RAC. He emphasized that DNREC will continue to seek advice and solutions for engaging communities during the regulation drafting process and bringing them to the table.

Based on concerns about the public comment timeline for CBI’s draft recommendations report, DNREC extended the deadline to January 19, 2018.

Appendix C: Public Workshops Participants

Please note: This list may be incomplete – some interviewees brought additional members, staff, colleagues or others with them to in-person or phone interviews.

Facilitation team and DNREC staff

Name	Affiliation
Kimberly Cole	DNREC
Kevin Coyle	DNREC
Dirk Durstein	DNREC
David Fairman	Consensus Building Institute
Caren Fitzgerald	DNREC
Sec. Shawn Garvin	DNREC
Rebecca Gilbert	Consensus Building Institute
Kathleen Harris	DNREC
Michelle Jacobs	DNREC
Susan Love	DNREC
Bob Scarborough	DNREC
Devera Scott	DNREC
Sofia Soto Reyes	Consensus Building Institute
Emily St. Clair	DNREC

Members of the public

Name	Affiliation
Jen Adkins	Partnership for the Delaware Estuary (PDE)
Onesimus Al-Amin	New Jim Crow Coalition
Rick Armitage	Newark
David Athey	Partnership for the Delaware Estuary (PDE)
Lynsey Baer	DSWA
Karen Barker	School teacher & citizen
Lois Barth	Self
Danene Birtell	Tri-State Bird Rescue & Research
Jean Bonner	DE City resident
Suzanne Brandt	Resident of DE City
Sascha Bretzger	Coalition for the Coastal Zone
Sarah Bucic	None
David Carter	Citizen
Chris Castagno	None
Jeff Coleman	None
Heather Connell	Sierra Club

Jay Cooperson	Self
Brian Crevasse	None
Garrison Davis	CFC2
David DeCaro	Chesapeake Utility
John Deemer	DCRC
Mah DelPizzo	None
Jennifer DiJoseph	Advanced Geoservices
Penny Dryden	DCR4EJ
Kenny Dryden	DCR4EJ
Bill Dunn	VP-CLNCC
Doug Eitelman	V&L
Barbara Finnan	Citizen
Beverly Flannigan	None
Lorraine Fleming	DNS
Bill Freeborn	DCA
Andrew Galvin	Network DE
Jill Gaumer	Self
Tom Godlewski	DCRC
Brenna Goggin	DNS
Annie Gould	DE State Senate
Debbie Hall	None
Sen. Stephanie Hansen	DE State Senate
Angela Harris	None
Debbie Heaton	DE Sierra Club
Stephanie Herron	DE Sierra Club
Jason Hoover	Self
Tim Houseal	Young Conaway Stargatt & Taylor
Doug Janiec	State resident
Stephen Johns	V&L
Pete Kearney	NCC
Ellen Kohler	DNS
Tim Konkus	None
Andrew Larkin	NOAA
Gwen Lawless	None
Ellen Lebowitz	None
Susan Mack	Self
Mark Martell	None
Lisa Matthews	NCSC
Eugene McCoy	CCOBH

Pastor Louis McDuffy	Eden/Hamilton Park
Jennifer Merrill	None
Paul Morrill	Committee of 100
Tony Mullen	None
Mary Peck	DNS
Coralie Pryde	Sierra Club
Jordyn Pusey	CLNCC
Michele Roberts	Environmental Justice Health Alliance
Amy Roe	Resident
Alan Rogers	Self
Robert Sadot	None
Jeanne Sadot	Self
Matthew Sarver	DOS
Peggy Schultz	LWVDE
James Seif	DNS
Victor Singer	Self
Lisa Smith	Tri-State Bird Rescue & Research
Deirdre Smith	Committee of 100
Kevin Stewart	American Lung Association
Nancy Willing	CLNCC
Martin Willis	Self
Mark Wolanski	New Castle County
Nick Wosileski	Newark, DE
Marian Young	BrightFields

Appendix D: Written Public Comments

The following stakeholders submitted written public comments. Their comments without attribution are included below.

Name	Affiliation
Karen Barker	Citizen
Michele Greene	Citizen
Richard Fleming	Citizen
John Martin	Citizen
Gene McCoy (on behalf of)	Council of Civic Organizations of Brandywine Hundred
Neil Quinlan, Sr.	Citizen
Matthew Sarver (on behalf of)	Delmarva Ornithological Society
Anonymous commenters	N/A

COMMENT 1

What initial input do you have about developing regulations for the Conversion Permits?

Ground water monitoring
Pre-planning for accidents
Smoke stack monitoring
Proper staff ratios for the air and water testing
Maps of where monitors will be regarding the sites
“More planning for the worst”
Testing of soil
Testing of mud in the Delaware River
Testing of dead fish in the Delaware River
Proper and prompt assurance of safety notifications

What stakeholder groups should be represented in the RAC?

State reps
Recreational – sports groups
County reps
Civic groups
School boards of local area
Community groups
Delaware Coalition for Open Government
New Castle Sailing Club
Friend of the State Parks
Civic League of New Castle County
Citizens Advisory Oversight Committee rep
EPA, scientists, engineers

How should RAC members be identified and selected?

Ratios from representatives of all the groups including civic and neighborhoods
They – DNREC – need to determine how many of each category of people. For example: 3 engineers, 2 business people, 3 civic-neighborhood people, etc...
Not too many or any advance to one group
Equal ratios

What role should the RAC play in the development of regulations?

#1 and #2 combined but the committee doesn't draft everything; rather they should give input and specific guidance on the regulations.

Do you have additional thoughts and suggestions you would like to share?

The Committee should have equal power over the final draft as to what becomes regulation. Power should be 50/50 split between DNREC and Committee.

COMMENT 2

What initial input do you have about developing regulations for the Conversion Permits?

The initial input that I have is that the RAC should go over the current regulations line by line and see what they think should be updated, amended, or voided all together. I also think the "footprints of conforming use" for all the 14 locations should be given a second look by the DNREC history of CZA the boundary stream from 1993 and the name of the sites are also outdated. The new regulations have the reflect economic development with a balance of environmental safe grounds.

What stakeholder groups should be represented in the RAC?

One person from the state's academic environmental research
One person from the state's agricultural interest
One person from the state's economic development office
One person from DE's Coastal Watermen Association
One person from southern DE's environmental advisory group
One person from the EPA
Two people from industry in the CZA
One person from industry outside the CZA
One person from labor
One person from the DE Attorney General's office
Two people from local government
One person from the Port of Wilmington
Two people who are private citizens

Do you have additional thoughts and suggestions you would like to share?

Involve community – hold meetings at Longshoreman Hall

COMMENT 3

How should RAC members be identified and selected?

Must include effective outreach to identify and recruit groups in the EJ communities. Find ways to facilitate and ensure their participation to the maximum extent they are able.

Process should allow for self-nomination.

Process should be clear in descriptions of expectations including time and travel commitments, work product scope and deliverables

Identify size and structure before beginning nomination process

Entirely open listing of nominees with qualifications, conflicts, etc.

Be sure to ask CBI what their experience shows with respect to nomination and selection processes that have worked in other settings

What role should the RAC play in the development of regulations?

Option 3 & 2 -> option 4 of the four options given was our general sense

Do you have additional thoughts and suggestions you would like to share?

DNREC should make allowances for the RAC to have expert presentations made to it to support the committee's work.

DNREC should ensure that (after promulgation of the final regulation) there is continuing independent group that is informed about and whose recommendations are sought about permits, implementation, enforcement, monitoring, and concerns from affected parties, etc.

COMMENT 4

What initial input do you have about developing regulations for the Conversion Permits?

"Indicators" proposed by initial CZ reg and MOU that lead to it need to be defined and quantified

What requirements apply to normal operation conditions and what requirements apply to occasions of mechanical or other failure?

What safety provisions are to apply in the event of default or dissolution of the organizational entity operating on one of the 14 sites?

What stakeholder groups should be represented in the RAC?

In addition to industrial interests, a broad spectrum of groups whose concerns are not connected to their wallets must be represented.

How should RAC members be identified and selected?

Identified according to extent that they are affected through their wallets.

Characterized as willing to see their expressed views exposed to the public. Ideas propagated by those ashamed of public exposure need to be so identified.

What role should the RAC play in the development of regulations?

DNREC staff must prepare an initial draft. All comments on what's included and what ought to be included need to be public distributed (or made available). The RAC needs to be the initial source of review comments. Starting point = existing CZ regulations.

Do you have additional thoughts and suggestions you would like to share?

The Port of Wilmington is included in the fourteen sites where bulk product transfers are allowed under HB190 if the material transferred is fully manufactured for utilized in the CZ. Yet under the original CZA the Port of Wilmington is specifically exempted. The HB190 measurement has been law since 8/2/2017. When will the DNREC enforce it, as the Secretary is under oath to do?

COMMENT 5

What initial input do you have about developing regulations for the Conversion Permits?

Permits should be representative of the typical CZA processes and should not terminate a site from use in the future.

Offsets should be established around the typical land use and federal state permits

Annual demonstration of offset success should be required, but no new annual offsets should be required

The regulations should be balanced and allow for the regulation of old and new facilities. New and expanded sites should be allowed.

What stakeholder groups should be represented in the RAC?

DE Estuary program

Nature Conservancy

Audubon Society

Country Land use and Conservations districts

Delmarva Power / Chesapeake utilities/ PBF Energy

Dover AFB

Federal/state agencies

Small business associations

Chamber of Commerce

Reps of communities within coastal zone borders and directly adjacent to facilities/sites

How should RAC members be identified and selected?

Experienced regulation and environmental professionals and recognized subject matter experts.

They should be nominated by groups, agencies, business, and selected by secretary or a governor appointed committee.

What role should the RAC play in the development of regulations?

The committee should draft the regulations in coordination with the DNREC in order to expedite the process.

Do you have additional thoughts and suggestions you would like to share?

The conversion permits should not limit the uses of transferred of manufactured product only in the CZA.

Conversion permits should be allowed prior to final regulation issuance. These should include new uses not previous allowed by the former regulations.

COMMENT 6

Petition: We Demand a Voice in Coastal Zone Redevelopments

Petition signatures are attached.

Ever since the Coastal Zone Conversion Permit Act (HB 190) was introduced in May, the most-affected communities – those within the Coastal Zone – have been left out of the discussion.

This new law, which was rapidly whisked through the legislature and signed by Governor Carney in early August despite zero public outreach, would allow the redevelopment of former industrial sites along the Delaware River and could bring new heavy industry to the area.

Meanwhile, the fenceline communities – those sharing a boundary with the redevelopment sites – have been left in the dark about a law that could bring untold pollution, noise and traffic to their neighborhoods, as well as the higher rates of cancer and respiratory illnesses that fenceline communities typically face.

Department of Natural Resources and Environmental Control (DNREC) Secretary Shawn M. Garvin promised public participation throughout the process of forming regulations under the law, yet no members of fenceline communities have been designated as stakeholders.

Two “public workshops” on short notice are insufficient. Public workshops are not public hearings. They are not necessarily part of any formal record. Giving two weeks notice of workshops held the week after Thanksgiving does not truly allow for the public to engage in a meaningful way about regulations that can potentially impact their lives in very serious ways.

DNREC should hold at least four formal public hearings, in Claymont, Southbridge, the Route 9 Corridor, and Delaware City.

Community members should be able to state their concerns, comments, and feedback on all aspects of this proposal, not just the process of forming the Regulatory Advisory Committee (RAC). Members of fenceline communities should serve on the RAC.

COMMENT 7

Dear CBI and DNREC,

I live in Newark, Delaware. My first concern is similar to those expressed by a great number of people at the hearing in Wilmington last week, namely the lack of transparency of the process to this point. I drove to Dover this summer to speak to the Senate about HB190 and clearly this was a waste of my gas, time and breath, because it was very clear that this deal had been made ahead of time, behind closed doors. CBI, DNREC and Governor Carney and the state senators and representatives are going to need to work very hard to gain the trust of the people of Delaware after this behavior.

Secondly, many people spoke about the need for more effective inclusion of communities that will be directly affected by CZA regulation changes. The obvious communities are those right next to the coastal zone and the 14 sites of greatest concern and they absolutely need to be included and their voices heard. BUT, I want to make the point that ANY CITIZEN who lives near the railroad tracks that will be transporting a much higher volume of potentially dangerous substances to the bulk transfer sites along the coast will also be negatively impacted. The

increased train traffic and noise are upsetting and disruptive to the neighborhood. Some nights it is hard to sleep when the trains idle at the station, causing pictures on my walls to rattle, or blow their horns and they race through the station. The potential danger of explosions, derailments and other accidents puts MANY PEOPLE AT RISK. This includes me and my family, neighbors and friends in Newark who live within less than a block from the railroad tracks.

This means that the outreach going forward needs to be much more widespread and accessible to many Delawareans.

COMMENT 8

Twenty percent of any capital investment proposed or approved shall be set aside for remediation and restoration of wetlands in the Coastal Zone. Industry has systemically escaped accountability for pollution that was reasonably foreseeable. The bankruptcy process has been abused and companies should not be permitted to walk away from their bad behaviors. Impacts to fish have been especially damaging and the Delaware River estuary needs to be protected from bad industrial practices that value profit over people.

COMMENT 9

These comments on environmental goals and indicators are intended to provide background and perspective to DNREC, the Consensus Building Institute and the Regulatory Advisory Committee as they begin to consider changes to Coastal Zone Act regulations.

Development of and reporting on Goals & Indicators was a critical element of Governor Carper's Coastal Zone Regulatory Advisory Committee's 1998 agreement leading to successful adoption of the current Coastal Zone Regulations. Industry representatives accepted regulatory inclusion of the G&I requirement as necessary to achieve their goals of increased flexibility regarding permitting.

As it has turned out, industry got the flexibility they desired – but those interested in environmental protection did not get the monitoring and reporting they had been promised, even though it was required by regulation.

For almost 20 years, and under four Secretaries, DNREC has simply declined to do that which 1999 regulations (which the Department wrote) require them to do. [*“Coastal Zone environmental goals and indicators shall be developed by the Department after promulgation of these regulations and used for assessing applications and determining the long-term quality of the Coastal Zone.”*] I believe this is because previous Secretaries focused on *“assessing applications”* while, in my view, the primary value is in *“determining the long term health of the Coastal Zone”*.

I believe this inaction resulted from an overly narrow view, by DNREC, of the value of environmental indicators. Consider two views:

DNREC view In my one-on-one discussions with Phil Cherry, the Department's former lead on this issue, he stated the following:

1. Indicators will not help DNREC make decisions regarding the need for and suitability of offsets included as part of individual Coastal Zone permit applications. For example, consider an industry which wants to expand a Coastal Zone facility -- and the expansion would increase NOX emissions. There already is so much NOX in the air coming from various sources, including upwind out-of-state sources, that if the expansion application was approved (without offsets) there would not be a noticeable increase in NOX levels in the Coastal Zone.
2. Nevertheless environmental indicators can be very valuable. If necessary DNREC resources were available, the Department would love to develop and use them to improve environmental management decisions covering all of Delaware.

My view

1. Environmental Indicators, whether statewide or CZ-specific, can be very valuable. They are an indispensable tool needed to understand and monitor environmental health and long term trends – and this monitoring is needed in order to improve environmental management decisions at the federal, state and local level.
2. Indicators will help Delaware's elected officials and business executives as they make broad strategic decisions regarding areas and issues of environmental concern and appropriate governmental and business response. They can influence the Department's action in a variety of situations – including decisions on individual Coastal Zone permit applications.

Long term scientific evaluation of environmental trends can provide insight on whether or not current environmentally-protective measures, regulatory and/or voluntary, are working. The results of this evaluation can influence, improve, and sometimes provide a rationale to strengthen – or ease – regulatory initiatives established with the goal of environmental improvement. Results also can mobilize and focus public and business support for needed changes.

Comparison of views

The two views outlined above actually are quite compatible. There should be little disagreement with the view that the result of most individual permitting decisions can be expected to have immeasurably small effects on local environmental indicators.

However there also should be agreement that measuring indicator trends over time will provide information valuable in setting strategic environmental goals for the state and Coastal Zone, determining changes or initiatives needed to reach those goals, reallocating resources to support those initiatives, monitoring progress toward those goals ... and providing a clear and defensible rationale for changing programs when trendline data says current programs will not achieve the goals that are set.

Path forward

There is merit in starting small. A set of reasonable environmental goals for Delaware's Coastal

Zone already has been broadly defined and accepted by the Department. For each goal it would be valuable, as a beginning, to select a few indicators for which there already is a wealth of historical data and begin by assembling the information, correlating it, reporting trends and assessing implications.

The information generated might not assist specific individual permitting decisions, but it is reasonable to predict that it will help DNREC prioritize and assign Departmental resources more efficiently. And it potentially can lead to modified regulations, faster permitting on applications and greater public support for Departmental programs and funding requests. Following indicator trends over time will lead to a general sense of progress and generate additional public and legislative support. And to the extent that the data covers the Coastal Zone it can help protect and preserve what the Act calls “*the most critical areas for the future of the State in terms of the quality of life in the State.*”

Assigning a DNREC intern to initiate the effort was a welcome beginning. It also is true that the scope of potential benefits is such that a more aggressive Departmental effort is well justified, even if it were not legally required.

COMMENT 10

- The RAC size should be between 15 and 20 to adequately represent the breadth and balance of perspectives.
- Appointment to the RAC should be at the discretion of the Secretary following an open public nomination process that is widely advertised to stakeholder groups and the public.
- The full breadth of scientific and environmental interests should be represented by at least 5 RAC members with special expertise in the following environmental areas: 1) air quality, 2) water quality and estuarine health 3) wildlife and wildlife impacts 4) environmental justice, and 5) environmental law and policy.
- Business interests represented on the RAC should include ecotourism and other recreational stakeholders.
- The RAC should provide specific and detailed guidance to DNREC on the formation of the regulations along with iterative review of draft regulations.

COMMENT 11

What initial input do you have about developing regulations for the Conversion Permits?

That the regulations will be developed without enough input from citizens and will be slanted to favor industry and their partners.

What stakeholder groups should be represented in the RAC?

Affected municipalities, environmental groups with a history on these issues, citizens who could be affected as well as across the state, small business owners, University of Delaware experts
The CZA has been a model throughout the country, so changes will affect all residents.

How should RAC members be identified and selected?

After solicitation and response, questionnaire and interview by Department of State, DNREC, & the Legislature.

What role should the RAC play in the development of regulations?

Should have a meaningful voice in drafting – not token presence. Review drafts, discuss revisions, have vote in adoption.

Do you have additional thoughts and suggestions you would like to share?

Because this was pushed through quickly it is very important to have an OPEN process from here on.

COMMENT 12

The transportation of hazardous materials by rail from Delaware City to the Pennsylvania border will be increased by the changes to the Coastal Zoning Act. The railroad tracks, particularly those owned by CSX, run through highly populated areas of New Castle County and the City of Wilmington. CSX currently carries sulfur in its cars and is anticipated to add ethanol to the list. Railroad tracks and cars have not been updated in some cases in hundreds of years. Compared to other developing countries the railroads of the United States, including CSX in Delaware, are backwards. In the event of a spill or a catastrophe emergency planning by various levels of government are probably the best that can be expected under the circumstances. However, the risk to the public from increased traffic on the rail lines and the increase in hazardous materials being carried should be taken into consideration when deciding regulatory regimes resulting from changes to the Coastal Zone Act. It is to be hoped that every effort will be to bring railroading and the transportation of hazardous materials into a technologically advanced state in Delaware, possibly devising ways to avoid congested cities and populations that frequently include the poor, the elderly, and the disabled who are limited in their ability to be sheltered and/or evacuated should an accident occur. CSX needs to be asked to improve their tracks, require the most up-to-date railroad cars carrying hazardous materials, to coordinate their schedules with schools and public events along the railroad lines to avoid conflict whenever possible, and to plan for the future to include going around major metropolitan areas with magnetic levitation tracks, tunnels, bridges, and barriers on overhead tracks. Specifically, there are no barriers on the tracks adjacent to Baynard Stadium and Trolley Square in Wilmington and probably other places.

COMMENT 13

Coastal Zone Waivers (i.e. Conversion Permits)

Every Waiver has an Industrial Company and the specific land they will use. The waiver is Company, use proposed, and property specific and must go to a Public Hearing before it is granted.

Land remediation currently needed by the property would be included in the waiver process.

Any change in the Company or their use would require a new waiver. Change in the owner, for

example, might be a merger, their purchase or their purchase of another Company to run the site or a change in their process used for the site.

Lack of the use by the Company of the site for one year would require a new waiver.

Note that we believe that the Company/use/land are key specifics that the Public knows more about than the Department and requires a public hearing to provide that information to the Department.

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Appendix E: Draft Nomination Form

Per a Start Action Notice signed by Secretary Garvin on September 28, 2017, Delaware's Department of Natural Resources and Environmental Control (DNREC) will develop the amendments to the Coastal Zone Regulations to implement the conversion process recently enacted by the General Assembly in a transparent and inclusive process. In order to promote the involvement of stakeholders, including communities, regulated parties, large and small businesses, organized labor, conservation and environmental organizations, public health, local government, and other affected persons, DNREC will convene a Regulatory Advisory Committee (RAC) to help the agency draft conversion permit regulations. It will also support public outreach and engagement efforts to ensure a collaborative regulatory development process.

This form should be used to submit nominations for a CZA Regulatory Advisory Committee member. Please submit a new form for each candidate you wish to nominate.

Nominee's Name:

Nominee's Organization, Entity or Primary Affiliation for purposes of this Nomination:

Address:

Phone Number:

Email:

Self-Nomination: (Please check box here)

Nominating Another: (Please check box here acknowledging that this person is aware of her/his nomination)

Nomination is for which stakeholder category: 1) environment, environmental justice, and public health; 2) community including fenceline communities; 3) business and labor; and 4) other.

If "Other" please explain why this nomination does not fit within the first three categories?

Please express the candidate's interests in the Coastal Zone.

What entity or stakeholders or community does this candidate represent?

What special skills, training, abilities, or experience does this candidate possess that will allow him/her to serve the Regulatory Advisory Committee well?

Do you have experience with, connections to, or networks with marginalized communities, fenceline communities, public health advocacy, or equity and environmental justice organizations?

What involvement has this candidate had with DNREC and the CZA regulatory process to date?

What other affiliations or experience does this candidate have that might be relevant to the CZA Regulatory Advisory Committee and DNREC's regulatory development process?

Why are you recommending this person? Please speak to this candidate's qualifications based on the membership criteria put forward by the Secretary.

Can you recommend who should serve as this candidate's alternate, in the event that they are not able to attend a Regulatory Advisory Committee meeting?

Is the candidate willing to work respectfully and collaboratively with those they may not agree with?

Additional information or comments:

Appendix F: Draft Disclosure Form

Per a Start Action Notice signed by Secretary Garvin on September 28, 2017, Delaware's Department of Natural Resources and Environmental Control (DNREC) will develop the amendments to the Coastal Zone Regulations to implement the conversion process recently enacted by the General Assembly in a transparent and inclusive process. In order to promote the involvement of stakeholders, including communities, regulated parties, large and small businesses, organized labor, conservation and environmental organizations, public health, local government, and other affected persons, DNREC will convene a Regulatory Advisory Committee (RAC) to help the agency draft conversion permit regulations. It will also support public outreach and engagement efforts to ensure a collaborative regulatory development process.

This form should be used to disclose any financial or personal or organizational interests related to the coastal zone for a CZA Regulatory Advisory Committee member. Please submit a new form for each candidate you are nominating.

Nominee's Name:

Does this candidate, relatives, or their employer, hold any financial interest, even if modest, in one or more of the 14 sites that would be regulated under the new CZA conversion permits? If so, please note the properties to which they have an interest and the nature of that interest (property owner, investor, lease holder of an operation, shareholder, lender, etc.)?

Does this candidate or their employer provide services to any of the owners or operators of one, some, or many of the 14 sites under the new Coastal Zone Conversion Permit Act? If yes, please include a list of the candidate's clients (legal, technical, or otherwise) and the general nature of the work (technical services, legal services, etc.)?

Does this candidate work for an organization that accepts funds from DNREC or other state agencies as part of their program resources? If yes, please describe the types and frequency of grants received.

Are there any other business interests, political ties, funding interests, or community interests that the candidate should disclose for purposes of transparency? If so, please offer such disclosures.

Appendix G: List of Possible Resources for the Regulatory Advisory Committee

CBI recommends that DNREC, and others as appropriate, provide the RAC with the necessary information for the RAC to jointly educate itself and be informed about technical and legal information relevant to their deliberations. Some of this information rests with DNREC while some may rest with other state agencies or stakeholder organizations. It may not be possible to gather, organize and provide to the RAC all of the below. However, the below lists the advice offered by a number of commenters on information needed:

- **Details for each site**
 - History of site activities
 - Contamination history
 - Remediation status
 - Current usage
 - Current on-site requirements (e.g. H&S protocols, daily monitoring)
 - Infrastructure/site amenities status.
 - Planned/prospective development opportunities by site (Duffield, D2, Claymont, Prosperity Partnership may have this kind of information)
 - Existing natural resources, if any
 - Risk assessment (TBD)
 - Readiness for leasing
- **Past data on the DNREC Coastal Zone program**
 - History and details on past permits and results (e.g. current site status)
 - History and details on past approved offsets and results
 - Timelines of actual permit application cases
- **Current permitting process**
 - List and brief descriptions of relevant laws and regulations (include links to full language)
 - List of required documents a company must submit to EPA, DNREC, New Castle County, etc. under the current process
 - All permits currently required and their sequencing under the current process
 - Diagram of the process to develop a property
 - Other processes already in place (e.g. HSCA, NPDES, CAA)
 - Permit prerequisites (i.e. Do some permits require others first?)
- **Benchmarking**
 - Current standards for heavy industrial infrastructure (e.g. double hulled ships, tank secondary containment)
 - Existing models for financial assurance (e.g. under RCRA, HSCA)
 - CZ language in other coastal states' regulations (e.g. PA, NJ, MD)
- **Definitions**
 - Materials on recognized definitions of industry types.

- Current state definitions of heavy industry vs. manufacturing and how that is determined in cases.
- **Forecasting**
 - Contractor(s) to analyze and/or information on the direct benefit to the state of each job created or state revenues for different scenarios. (e.g. taxes generated – payroll taxes, property taxes, personnel income, corporation tax, gross receipts, county, market potential; number of jobs)
 - Proposed/likely operations on these sites that would give rise to a Conversion Permit. What is the universe of likely businesses – what were the companies “knocking on the door” in the past?
 - Prospects for a future DE economy, located in the CZ (i.e. feasible “new” business arenas)
- **Other information/materials**
 - What is DNREC’s vision for these sites?
 - Large, detailed maps of the 14 sites
 - List of acronyms
 - List of potential technical advisors (if subcommittees are not set up)
 - Timeline of when key pieces are due to DNREC
 - Employment statistics
 - Employment rates in New Castle Co. and the rest of DE.
 - Employment rates by industry.

Appendix H: Public Comment Form for Draft Report

COMMENT SHEET

DRAFT Coastal Zone Conversion Permit Act Process Recommendations Report

Please share your feedback on the draft Coastal Zone Conversion Permit Act (CZCPA) Process Recommendations Report. Your feedback will be incorporated into a final version of this Report. Your feedback will help DNREC set up a Regulatory Advisory Committee (RAC) for development of regulations for Coastal Zone Conversion Permits.

Comments should be emailed to CZA_Conversion_Permits@state.de.us. You can also submit your own typed comments to DNREC at this email address. Comments received by DNREC by January 19, 2018 will be incorporated into the final Report.

(1) What specific feedback do you have on the 13 recommendations listed in the draft Report? Please write specific feedback about each recommendation you wish to comment on under the corresponding header.

Scope

Recommendation #1: The RAC would focus solely on changes to existing regulations or the creation of additional regulations necessary to implement the CZCPA. The RAC would not be charged with amending or revising the regulations already in place for existing permits.

Stakeholder Groups

Recommendation #2: The Secretary should provide for representation by three broad stakeholder categories and one “other” category for those who may not fit clearly in one of those three categories: 1) environment, environmental justice, and public health; 2) community including fenceline communities; 3) business and labor; and 4) other.

Committee Size and Balance

Recommendation #3: The Secretary should target a RAC of 15-20 members and allow for the following: 1) five to six members (5 to 6) from each of the three categories noted above, in equal balance of numbers for each of the three main stakeholder categories; 2) one to three (1 to 3) additional seats for those who do not fit within those three categories, if needed; 3) one (1) full member seat for DNREC; and 4) alternates should be allowed.

Criteria for Membership

Recommendation #4: The Secretary should establish clear criteria for membership and require that nominees to the RAC complete a nomination and disclosure form that is made publicly available.

Membership Selection

Recommendation #5: The Secretary should establish a transparent nomination process for each stakeholder category. Interested parties would nominate potential representatives (self-nominations would be accepted as well) to the RAC during a period of time in early 2018. The

DNREC Secretary would review the nominations and select members and alternates from the pool of nominees within a committee structure decided by the Secretary as informed by the Report.

Workgroups and Technical Expertise

Recommendation #6: The Secretary should allow for the formation of RAC subcommittees or technical workgroups that can take on detailed analysis and discussion of specific topics. These may include non-member technical experts. Workgroups would be for deliberation, exploration, and option generation but any and all decisions should rest solely with the full RAC.

Community Outreach

Recommendation #7: The Secretary and the RAC should make a concerted effort to reach out to, communicate with, and build working relationships with marginalized and potentially impacted communities, neighborhoods, and groups. The RAC should consider forming a workgroup to address the needs of marginalized, environmental justice, and fenceline communities and groups in the development of regulations.

Committee Transparency

Recommendation #8: The Secretary should ensure RAC transparency by considering the time, place, and form of its meetings and any associated public outreach and engagement to provide for public access and participation.

Committee Product

Recommendation #9: The Secretary should instruct the RAC to write prescriptive guidance (Option #2) and review regulatory language drafted by DNREC (Option #4) when possible. This would allow for the RAC to draft detailed, prescriptive guidance to provide DNREC with the conceptual approach and many details for drafting actual regulations. Wherever possible, the RAC should have the opportunity to review and comment on specific draft regulatory language as it is developed by DNREC during the process.

Membership Expectations

Recommendation #10: The Secretary should establish expectations for participation. RAC members should review, revise as needed, and adopt such expectations as formal groundrules for participation.

Committee Decision Rule

Recommendation #11: The Secretary should allow the RAC to utilize a “consensus” approach, which seeks to identify a final package of recommendations that all or almost all RAC members can “live with”. The Committee would issue a final report with consensus as defined generally above to the greatest extent possible within the time and resources allocated to the Committee.

Role of DNREC on the Committee

Recommendation #12: DNREC should participate as a full member of the RAC and its representative should serve as the committee chair to ensure forward progress. DNREC staff will

participate in RAC meetings and support the chair as necessary. If resources allow, a non-partisan facilitator would facilitate meetings and support the RAC and the chair throughout the process.

Issues to Cover in the Deliberations

Recommendation #13: DNREC should develop a draft work plan and timeline based on these issues identified in the assessment and the RAC should review, revise as needed, and adopt the work plan and timeline at one of its first meetings.

(2) Do you have additional thoughts or feedback you would like to share about this draft Report, this process, the RAC, or any other subject you would like to comment on?

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